

(5)

Supreme Court, U.S.

FILED

JUN 30 1988

IN THE

JOSEPH F. SPANIOL, JR.  
CLERK**Supreme Court of the United States**

OCTOBER TERM, 1987

THE ARGENTINE REPUBLIC,

*Petitioner,*

VS.

AMERADA HESS SHIPPING CORPORATION, *et al.*,*Respondents.*

**On Writ of Certiorari to The United States  
Court of Appeals for The Second Circuit**

**JOINT APPENDIX**

DOUGLAS R. BURNETT\*

RICHARD H. WEBBER

HILL RIVKINS CAREY

LOESBERG O'BRIEN &amp; MULROY

21 West Street

New York, New York 10006

(212) 825-1000

BRUNO A. RISTAU\*

JOEL E. LEISING

KAPLAN RUSSIN &amp; VECCHI

1215 Seventeenth St., N.W.

Washington, D.C. 20036

(202) 887-0353

*Counsel for Petitioner*

RAYMOND J. BURKE, JR.\*

FRANCES C. PETERS

BURKE &amp; PARSONS

1114 Avenue of the Americas

New York, New York 10036

(212) 354-3800

*Counsel for the Respondents**\*Counsel of Record*


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**PETITION FOR CERTIORARI FILED FEBRUARY 16, 1988  
CERTIORARI GRANTED APRIL 18, 1988**

115 pp  
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**DOCKET ENTRIES—DISTRICT COURT**  
**(Amerada Hess Shipping)**

*Plaintiff*

AMERADA HESS SHIPPING CORPORATION

*Defendant*

ARGENTINE REPUBLIC

<b>DIST:</b>	208
<b>OFF:</b>	01
<b>DOCKET:</b>	Yr. 85 Number 4365
<b>FILING DATE:</b>	Mo. 06 Day 7 Year 85
<b>J</b>	3
<b>N/S</b>	890
<b>O</b>	1
<b>\$ DEMAND</b>	
Nearest \$1,000	2,000
<b>JUDGE MAG NO.</b>	J 0857
<b>COUNTY:</b>	36061
<b>DOCKET:</b>	Yr. 85 Number 4365

*Cause*

(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

28 USC 1350. Violation of International Law in that Argentine military forces attacked the S/T Hercules, a neutral merchant ship, on the high seas without provocation or warning.

*Attorneys*

BY: HILL, RIVKINS, CAREY,  
LOESBERG, O'BRIEN &  
MULROY  
21 West Street  
New York, NY 10006  
825-1000

MINISTRY OF FOREIGN  
AFFAIRS  
3 East Arenales 761  
Buenos Aires 1061  
Argentina

KAPLAN RUSSIN  
VECCHI & KIRKWOOD  
28 W 44th St Suite 200  
N.Y.C. 10036  
869-4350

Date	Filing Fees Paid	Statistical Card
07 Jun 1985	Re. Number 10-8869	Card-Date Issued: 5-9-86

**PROCEEDINGS**

Date	NR.	Proceedings
6-7-85	1	Filed complaint; issued summons and notice purs. to 28 USC 636(c).
6-26-85	2	Filed Clerk's Certificate of Mailing of summons and complaint upon: Mr. Dante Caputo LIC. Minister of Foreign Affairs Ministry of Foreign Affairs Reconquista 1088 Buenos Aires, Argentia 1003 reg. #206319996 ret. 7-4-85
8-8-85	3	Filed Stip & Order that the time for deft to respond to Summons & Compl is ext. to 9-16-85 .. So Ordered .. Carter, J.
9-13-85	4	Filed defts Notice of Motion & Memo of Law for an order to dismiss action .. RET: 9-27-85.
9-30-85	5	Filed Stip that pltffs time to respond to defts motion is ext to 10-15-85 ... So Ordered .. Carter, J.
9-30-85	6	Filed Stip that the time for pltffs to respond to defts Motion papers is ext to 10-15-85 .. hearing date for motion adj. to 10-25-85 .. So Ordered .. Carter, J.
10-17-85	7	Filed Stip that the time for pltffs to respond to deft's motion papers is ext to 10-21-85 .. hearing date for motion is adj. to 11-1-85 .. So Ordered .. Carter, J.
11-15-85	8	Filed pltffs Affdvt of Douglas R. Burnett in opposition to deft's motion to dismiss.
11-15-85	9	Filed Joint memorandum of law in opposition to deft's motion to dismiss.

12-6-85 10 Filed deft's response to pltffs' jt memo of law in opposition to deft's motion to dismiss.

5-5-86 11 Filed Opinion #59270 . . defts' motions must be granted . . complts are dismissed . . So Ordered . . Carter, J. cm (filed in 85 civ 4378RLC)

5-9-86 12 Filed Judt that complt is dismissed. EOD 5-9-86 cm

5-20-86 13 Filed pltffs affdvts & Notice of Motion for an order to amend the court's findings. (filed in 85 civ 4378RLC) RET: 6-19-86

5-20-86 14 Filed pltffs Memo of law in support of its motion to amend. (filed in 85 civ 4378RLC)

5-22-86 15 Filed pltffs Jt Memo of law in support of its motion. (filed in 85 civ 4378RLC)

6-23-86 16 Filed deft's reply to pltffs' jot motion under rule 52(b). (filed in 85 civ 4378RLC)

6-25-86 — Filed Memo Endorsed on #13 . . motion denied . . So Ordered . . Carter, J. cm (filed in 85 civ 4378RLC)

7-23-86 17 Filed pltffs Notice of Appeal to the USCA 2nd cir from the judgt dtd 5-9-86 & entered on 7-23-86.  
— cc to: Burke & Parsons, 1114 Ave of the Amer. NYC 10036, Kaplan Russin, Vecchi & Kirkwood, 28 W 44th St, Suite 200, NYC 10036.

7-24-86 — Forwarded copy of Notice of Appeal to Dist Judge & copy of Notice of Appeal & docket entries to Court of Appeals. (filed in 85 civ 4378RLC)

7-23-86 — Filed pltff United Carriers Notice of Appeal from the opinion dtd 5-5-86, judgt entered on 5-9-86 & the order denying pltffs motion dtd 6-25-86.  
— cc to: Kaplan Russin Vecchi & Kirkwood, 28 W 44th St, NYC 10036.

7-24-86 — Forwarded copy of Notice of Appeal to Dist Judge & copy of Notice of Appeal & docket entries to Court of Appeals. (Orig filed in 85 civ 4378RLC #12)

8-1-86 18 Filed Notice that original record of appeal has been transmitted to the USCA 2nd cir.

11-30-87 19 Fld True Copy of Order, Mandate & Judgment #87,2218 with attached opinion from the USCA for the 2nd Circuit, Ordered that the judgment of said District Court reversed & the action is remanded to the said district court for further proceedings in accordance with the opinion of this court with costs to be taxed against the appellee with attached statement of costs taxed in the amount of \$2,945.82 in favor of Appellant, Amerada Hess Shipping Corp. . . Clerk, Elasine B. Goldsmith. copy to chambers

**DOCKET ENTRIES—DISTRICT COURT**  
**(United Carriers)**

*Plaintiff*  
 UNITED CARRIERS, INC.

*Defendant*  
 ARGENTINE REPUBLIC

DIST: 208  
 OFF: 1  
 DOCKET: Yr. 85 Number 4378  
 FILING DATE: Mo. 6 Day 7 Year 85  
 J 3  
 N/S 380  
 O 1  
**\$ DEMAND**  
 Nearest \$1,000 10  
 JUDGE MAG NO. J 0898, 0857  
 COUNTY: 99999  
 DOCKET: Yr. 85 Number 4378

*Cause*

(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE IS  
 FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

Pur. to 28 U.S.C. 1330 (Alien Tort Claims Act)  
 —Action for pers. prop. dmgs

*Attorneys*

By: FRANCES PETERS	KAPLAN, RUSSIN VECCHI
BURKE & PARSONS	& KIRKWOOD
1114 Avenue of the Americas	28 W 44th St Suite 200
New York, N.Y. 10036	N.Y.C. 10036
(212) 354-3800	869-4350

Date	Filing Fees Paid	Statistical Card
07 Jun 1985	Re. Number	Card-Date
	10-88801	Issued: 5-9-86

**PROCEEDINGS**

Date	NR.	Judge Carter
6-7-85	1	Fld. Complaint; Issd. Summons & Notice purs. to 28 U.S.C. 636(c).
6-14-85	2	Filed NOTICE OF ASSIGNMENT to Judge Carter. c/c
6-26-85	3	Filed Clerk's Certificate of Mailing of sum- mons and complaint upon: Lic. Dante Caputo Minister of Foreign Affairs Ministry of Foreign Affairs Reconquista 1088 Buenos Aires [Argentina 1003 reg. #206319996 ret. 7-4-85]
8-8-85	4	Filed Stip & Order that the time for the deft to respond to the summons & complt is ext. to 9-16-85 .. So Ordered .. Carter, J.
9-12-85	5	Filed defts Notice of Motion & Memo of Law for an order to dismiss action. RET: 9-27-85
10-17-85	6	Filed Stip that the time for pltffs to re- spond to defts motion papers is ext to 10- 21-85 .. hearing date for motion is adj. to 11-1-85 .. So Ordered .. Carter, J.
11-15-85	7	Filed pltffs Affdvt of Raymond J. Burke in opposition to deft's motion to dismiss.
11-15-85	8	Filed Joint Memo of Law in opposition to deft's motion to dismiss.
12-4-85	9	Filed Stip & Order that the time for deft's reply to pltffs' jt Memo of Law in oppo- sition to deft's motion to dismiss is ext to 12-6-85 .. So Ordered .. Carter, J.

12-6-85 10 Filed deft's response to pltffs' jt memorandum of law in opposition to deft's motion to dismiss.

- Filed Opinion #59270. . . (orig filed in 85 civ 4365RLC #11)

5-9-86 11 Filed Judgt that complt is dismissed. EOD 5-9-86 cm

5-20-86 - Filed pltffs affdvts & Notice of Motion for an order to amend court's findings. RET: 6-19-86 (orig filed in 85 civ 4365RLC) #13

5-20-86 - Filed pltffs Memo of Law in support of its motion to amend (orig filed in 85 civ 4365RLC #14).

5-22-86 - Filed pltffs Jt Memo of Law in support of its motion. (orig filed in 85 civ 4365RLC #15)

6-29-86 - Filed deft's reply to pltffs' jt motion under rule 52(b). (orig filed in 85 civ 4365RLC #16)

6-25-86 - Filed Memo Endorsed on #13 of 85 civ 4365RLC . . . motion denied . . So Ordered . . Carter, J. cm

7-23-86 12 Filed pltffs Notice of Appeal to the USCA 2nd cir from the opinion dtd 5-5-86 & judgt dtd 5-9-86, & the order denying pltffs motion dtd 6-25-86.

- cc to: Kaplan, Russin, Vecchi & Kirkwood, 28 W 44th St, NYC 10036.

7-24-86 - Forwarded copy of Notice of Appeal to Dist Judge & copy of Notice of Appeal & docket entries to the Court of Appeals. (orig. filed in 85 civ 4365RLC)

7-23-86 - Filed pltff Amerada Hess Notice of Appeal to the USCA 2nd cir from the judgt dtd 5-9-86 & entered on 6-24-86.

- cc to: Burke & Parsons, 1114 Ave of the Amer. NYC 10036, Kaplan, Russin Vecchi & Kirkwood, 28 W 44th St, Suite 200, NYC 10036.

7-24-86 - Forwarded copy of Notice of Appeal to Dist. Judge & copy of Notice of Appeal & docket entries to Court of Appeals. (orig filed in 85 civ 4365RLC #17)

8-1-86 13 Filed Notice that original record of appeal has been transmitted to the USCA 2d cir.

12-18-87 14 Fld. True Copy of order from the USCA- Second Circuit that the motion for a recall of mandate and for a stay purs. to FRAP 41(b) is hereby granted. CLERK USCA. jl

**DOCKET ENTRIES—COURT OF APPEALS**  
**(Amerada Hess Shipping)**

CASE NO.: 86-7603      JUDGE BELOW: CARTER (0857)  
 CALENDAR NUMBER: 334

Official Caption<sup>1</sup>

Docket No. 86-7603

AMERADA HESS SHIPPING CORPORATION,  
*Plaintiff-Appellant,*  
 v.  
 ARGENTINE REPUBLIC,  
*Defendant-Appellee.*

Authorized Abbreviated Caption<sup>2</sup>

Docket No. 86-7603

AMERADA HESS SHIP CORP v. ARGENTINE REP

*Appellant:*

HILL, RIVKINS, CAREY  
 LOESBERG O'BRIEN  
 & MULROY  
 21 West Street  
 New York, N.Y. 10006  
 (212) 825-1000  
 Att: Douglas R. Burnett, Esq.

*Appellee:*

KAPLAN, RUSSIN, VECCHI  
 & KIRKWOOD  
 28 West 44th Street, Suite 200  
 New York, N.Y. 10036  
 (212) 869-4350  
 Att: Jeanne Ferris Siegel, Esq.

BURKE & PARSONS  
 1114 Avenue of the Americas  
 New York, N.Y. 10036  
 (212) 354-3800

For Official Caption and Complete Set of Attorney Listings  
 Please See The LEAD DOCKET CARD

Lead Docket Number 86-7602

<sup>1</sup> Fed. R. App. P. 12(a) and 32(a).

<sup>2</sup> For use on correspondence and motions only.

**GENERAL DOCKET**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE SECOND CIRCUIT**

Date      FILINGS—PROCEEDINGS 86-7603

- 7-24-86 Copy of district court docket entries and notice of appeal on behalf of the appellant, AMERADA HESS SHIPPING CORPORATION, filed
- 7-24-86 Copy of receipt re: Payment of docketing fee in district court filed
- 8-1-86 Appellant AMERADA HESS SHIPPING CORPORATION Form C filed (w/pfs/copy of order)
- 8-1-86 Appellant AMERADA HESS SHIPPING CORPORATION Form D filed (w/pfs)
- 8-1-86 Record on Appeal filed (original papers of district court)
- 8-5-86 Appellant AMERADA HESS SHIPPING CORPORATION Notice of Motion for CONSOLIDATION of this appeal with docket number 86-7602, FILED. (original to FS).
- 8-6-86 SCHEDULING ORDER #1, FILED.

FOR FURTHER DOCKET ENTRIES PLEASE SEE THE LEAD DOCKET CARD 86-7602

For Official Caption and Complete Set of Attorney Listings Please See The LEAD DOCKET CARD  
 Lead Docket Number 86-7602

**DOCKET ENTRIES—COURT OF APPEALS**  
**(United Carriers)**

CASE NO.: 86-7602      JUDGE BELOW: CARTER (0857)  
 CALENDAR NUMBER: 333

Official Caption<sup>1</sup>

Docket No. 86-7602 & 86-7603

UNITED CARRIERS, INC., and  
 AMERADA HESS SHIPPING CORPORATION,  
*Plaintiffs-Appellants,*

v.

ARGENTINE REPUBLIC,  
*Defendant-Appellee.*

Authorized Abbreviated Caption<sup>2</sup>

Docket No. 86-7602 & 86-7603

UNITED CARRIERS v. ARGENTINE REP

*Appellant:*

BURKE & PARSONS  
 BY: THOMAS J. HAWLEY  
 1114 Avenue of the Americas  
 New York, N.Y. 10036  
 (212) 354-3800  
 Attn: Stephen P. Kyne, Esq.

HILL RIVKINS CAREY  
 LOESBERG O'BRIEN MULROY  
 21 West Street  
 NYC, NY 10004  
 (212) 825-1000  
 Attn: Douglas R. Burnett, Esq.

*Appellee:*

BRUNO A. RISTAU, ESQ.  
 KAPLAN, RUSSIN, VECCHI  
 1215-17th Street, N.W.  
 Washington, D.C. 20036  
 (202) 887-0353

AMICUS CURIAE:  
 REPUBLIC OF LIBERIA  
 FRANK L. WISWALL, JR.  
 11870-D Sunrise Valley Dr.  
 Reston, Virginia 22091-3303  
 703-620-6780

AMICUS CURIAE:  
 JAMES T. LAFFERTY  
 SEAMEN'S CHURCH INST. OF  
 N.Y. and N.J.  
 50 Broadway, Third Floor  
 New York, N.Y. 10004  
 (212) 269-2710

AMICUS CURIAE:  
 DAVID EPSTEIN or  
 MICHAEL J. SINGER, ESQS.  
 Civil Division  
 Department of Justice  
 550 11th Street, N.W.  
 Room 1234  
 Washington, D.C. 20530  
 (202) 724-7455

<sup>1</sup> Fed. R. App. P. Rule 12(a) and 32(a).

<sup>2</sup> For use on correspondence and motions only.

**GENERAL DOCKET**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE SECOND CIRCUIT**

Date	FILINGS—PROCEEDINGS 86-7602
7-25-86	Copy of district court docket entries and notice of appeal on behalf of Appellant UNITED CARRIERS, INC., Filed.
7-25-86	Copy of receipt re:payment of docketing fee in district court, filed. (received on 7-24-86)
8-1-86	Appellant UNITED CARRIERS, INC., Form C, Filed. (w/pfs)
8-1-86	Appellant UNITED CARRIERS, INC., Form D, Filed. (w/pfs)
8-1-86	Record on Appeal Filed.
8-4-86	SCHEDULING ORDER #1, FILED.
8-13-86	Order granted Appellant AMERANDA [sic] HESS SHIPPING motion for consolidation of appeals filed (as to Docket #'s 86-7602 and 86-7603) SCHEDULING ORDER #2 filed (both orders endorsed on motion filed 8-5-86)
8-29-86	Movant REPUBLIC OF LIBERIA motion for leave to file a brief as amicus curiae filed (w/pfs)
9-8-86	Order granting movant REPUBLIC OF LIBERIA leave to file a brief as amicus curiae filed
9-10-86	Amicus Curiae REPUBLIC OF LIBERIA brief filed (w/pfs)
9-12-86	Movant SEAMEN'S CHURCH INSTITUTE motion for leave to file brief as Amicus Curiae filed (w/pfs)
9-12-86	Movant SEAMEN'S CHURCH INSTITUTE Amicus Curiae brief received (w/pfs)

9-12-86	Appellants UNITED CARRIERS, INC & AMERADA HESS CORPORATION page proof brief filed (w/pfs)
9-12-86	Appellants UNITED CARRIERS, INC & AMERADA HESS CORPORATION joint appendix filed (w/pfs)
9-15-86	Appellants UNITED CARRIERS INC & AMERANDA [sic] HESS CORPORATION final form brief filed (w/pfs)
9-17-86	Order granting movant SEAMEN'S CHURCH INSTITUTE Leave to file brief as an Amicus Curiae [sic], filed (endorsed on motion filed 9/12/86)
9-17-86	AMICUS SEAMEN'S CHURCH INSTITUTE Amicus Curiae Briefs, filed (w/pfs).
10-2-86	Appellee ARGENTINE REPUBLIC, Brief filed (w/pfs).
11-3-86	Case heard before Feinberg, Chief Judge, Oakes, Kearse, C.J.J.
11-20-86	Transcript of oral argument filed
1-21-87	Amicus Curiae UNITED STATES AMERICA brief filed w/pfs.
1-28-87	Appellant AMERADA HESS SHIPPING CORP motion for permission to respond to amicus brief of United States filed (w/pfs) (see order of 1-30)
1-30-87	ORDER MOOTING appellant AMERADA HESS SHIPPING CORP motion for permission to respond to amicus brief of United States FILED (before: WF; JLO; ALK; endorsed on motion of 01-28-87).
2-4-87	Amicus Curiae SEAMEN'S CHURCH INST. OF NY & NJ letter in response to brief of Amicus Curiae USA filed

- 2-5-87 Appellee ARGENTINE REPUBLIC letter in response to Amicus Curiae USA brief filed
- 2-9-87 Appellants UNITED CARRIERS INC and AMERADA HESS SHIPPING CORPORATION joint reply brief to Amicus Curiae Brief of USA filed (w/pfs)
- 7-16-87 Amicus Curiae SEAMEN'S CHURCH INSTITUTE letter response to the Court's letter of July 2, 1987 requesting further briefing from the parties in the appeal *received*
- 7-23-87 Amicus Curiae the REPUBLIC OF LIBERIA response to the Court's letter of July 2, 1987 requesting further briefing from the parties in the appeal *received* w/pfs.
- 7-23-87 Appellee ARGENTINE REPUBLIC letter response to the Court's letter of July 2, 1987 requesting further briefing from the parties in the appeal *received*
- 7-23-87 Appellants AMERADA HESS SHIPPING CORP. and UNITED CARRIERS, INC. joint response to the Court's letter of July 2, 1987 requesting further briefing from the parties in the appeal *received*
- 7-23-87 Amicus Curiae U.S. DEPT. OF JUSTICE letter response to the Court's letter of July 2, 1987 requesting further briefing from the parties in the appeal *received*
- 7-24-87 Appellee ARGENTINE REPUBLIC letter response to the Court's letter of July 2, 1987 requesting further briefing from the parties in the appeal *received*
- 9-11-87 Judgment reversed and remanded by a published signed opinion filed. (WF, CH.J.).
- 9-11-87 Judge Kearse dissents in a separate opinion.

- 9-11-87 Judgment filed.
- 9-22-87 Appellants UNITED CARRIERS INC., et al itemized and verified bill of costs *received*. (w/pfs).
- 9-24-87 Appellants AMERADA HESS SHIPPING CORP., itemized and verified bill of costs *received*. (w/pfs).
- 9-25-87 Appellee ARGENTINE REPUBLIC petition for rehearing with a suggestion for a rehearing en banc filed. (w/pfs).
- 9-30-87 Amicus Curiae USA motion for leave to file out of time petition for rehearing *received* (w/pfs)
- 9-30-87 Amicus Curiae USA petition for rehearing with suggestion for rehearing in banc *received* (w/pfs)
- 10-5-87 Amicus Curiae USA motion for leave to file out of time petition for rehearing with in banc suggestion filed (w/pfs)
- 10-19-87 Order granted amicus Curiae USA motion for leave to file out of time petition filed (endorsed on motion filed 10-5-87) [Clerk]
- 10-19-87 Amicus Curiae USA petition for rehearing with suggestion for rehearing in banc filed (w/pfs)
- 11-18-87 Order denied appellee ARGENTINE REPUBLIC petition for rehearing with suggestion for rehearing in banc filed (Clerk)
- 11-18-87 Order denied amicus Curiae USA petition for rehearing with suggestion for rehearing in banc filed (Clerk)
- 11-25-87 Appellants AMERADA HESS SHIPPING CORP statement of costs filed (2945.82)
- 11-25-87 Appellee ARGENTINE REPUBLIC statement of cost filed (\$2946.35).
- 11-25-87 Mandate issued. (opinion, judgment, & statement of cost)

- 12-3-87 Appellee ARGENTINE REPUBLIC motion for recall of mandate filed w/pfs
- 12-10-87 Appellants, AMERADA HESS SHIPPING CORP and UNITED CARRIERS, INC. affidavit in opposition to the motion of the ARGENTINE REPUBLIC motion to recall the mandate filed w/pfs.
- 12-11-87 Appellee ARGENTINE REPUBLIC letter in response affidavit in opposition to the motion of the ARGENTINE REPUBLIC motion to recall the mandate *received*
- 12-14-87 Order granting appellee ARGENTINE REPUBLIC motion for recall of mandate and for stay pursuant to FRAP 41(b) filed. (WF, JLO, ALK) (endorsed on motion filed 12-3-87)
- 1-13-88 Appellee ARGENTINE REPUBLIC motion for further stay of mandate filed w/pfs.
- 1-15-88 Order granting appellee ARGENTINE REPUBLIC motion for further stay of mandate filed (WF, Ch.J., JLO, ALK, C.JJ) (endorsed on motion filed 1-13-88)
- 2-26-88 Notice of filing petition for writ of certiorari dated 2/16/88 FILED (S.C. #87-1372)
- 4-22-88 Certified copy of order Supreme Court GRANTING PETITION FOR WRIT OF CERTIORARI filed

**COMPLAINT (AMERADA HESS SHIPPING)**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
**Index No. 85 Civ 4565 (RLC)**

AMERADA HESS SHIPPING CORPORATION, *Plaintiff,*  
- against -  
ARGENTINE REPUBLIC, *Defendant.*

**VERIFIED COMPLAINT**

The plaintiff, AMERADA HESS SHIPPING CORPORATION, by its attorneys, HILL RIVKINS CAREY LOESBERG O'BRIEN & MULROY, complaining of the above named defendant, alleges upon information and belief:

**Parties:**

FIRST: Plaintiff, AMERADA HESS SHIPPING CORPORATION is a corporation organized under the law of the Republic of Liberia with a place of business in Monrovia, Liberia.

SECOND: The Argentine Republic is a member of the United Nations.

**Jurisdiction**

THIRD: This Court has jurisdiction over this action pursuant to the Alien Tort Claims Act, 28 USC §1330.

FOURTH: This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears. This is an

admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

FIFTH: This Court has jurisdiction over this action according to the principle of universal jurisdiction, recognized in customary international law, over those violations of international law which offend against the community of nations and which are hereinafter more fully set forth.

#### Cause of Action

SIXTH: S/T HERCULES was a steam-turbine crude oil tanker of 220,117 deadweight tons, built in 1971, Lloyd's Register No. 7038434, American Bureau of Shipping No. 7100481, and registered under the laws of the Republic of Liberia.

SEVENTH: On April 26, 1977, in a Charter Party signed in New York, AMERADA HESS SHIPPING CORPORATION chartered the S/T HERCULES from her Owners, United Carriers, Inc., for a period of five years, subsequently extended.

EIGHTH: From the opening of the Trans-Alaska Pipeline System, S/T HERCULES was continuously employed in the domestic trade of the United States, carrying full cargos of Alaska North Slope crude oil from Valdez, Alaska, via Cape Horn to the Hess Oil Virgin Islands Company Refinery at St. Croix, United States Virgin Islands. At the time of her loss she was so engaged. Pursuant to the Charter Party, the plaintiff was obligated to pay for the bunkers which were at all times the property of AMERADA HESS SHIPPING CORPORATION. It was the customary practice of AMERADA HESS SHIPPING CORPORATION to bunker the S/T HERCULES for a round trip voyage from the Amerada Hess Refinery.

NINTH: The S/T HERCULES, with a beam of 158.13 feet, was unable to use the Panama Canal which is restricted to ships with beams under 107 feet.

TENTH: The S/T HERCULES was a participant in the AMVER System (Automated/Merchant Vessel Reporting System), an international vessel position reporting system, operated by the United States Coast Guard, which coordinates assistance to ships in distress, regardless of nationality. Military use of information voluntarily transmitted by merchant ships is strictly forbidden by international custom and practice.

ELEVENTH: The local AMVER reporting station for ships transiting the South Atlantic is "General Pacheco", a radio station operated by the Government of Argentina. The S/T HERCULES routinely transmitted to General Pacheco, when the ship was sailing in the South Atlantic, giving the ship's name, international call sign, registry, position, course, speed, and voyage description.

TWELFTH: Liberian flag ships, such as the S/T HERCULES, are considered national defense assets of the United States of America, available for national service in time of war and by this reason, deserve full protection under the laws of this country.

THIRTEENTH: On or about April 2, 1982 the armed forces of the Republic of Argentina undertook an invasion of the Falkland Islands, also known as the Islas Malvinas, a British Crown Colony, and hostilities then commenced between the Republic of Argentina and the United Kingdom.

FOURTEENTH: At all times during the above-mentioned Falkland/Malvinas conflict, the Republic of Liberia maintained the status of a neutral country.

FIFTEENTH: On May 2, 1982, H.M.S. CONQUEROR, a Royal Navy submarine, torpedoed and sank the GENERAL BELGRANO, an Argentine Navy cruiser.

SIXTEENTH: At 1330 GMT on May 5, 1982, pursuant to instructions from the Argentine Navy ship BAHIA PARAISO, and as required by international law, the S/T

HERCULES, on a laden voyage from Valdez to St. Croix, altered her course to search for survivors of the GENERAL BELGRANO. Following her release from these duties, the ship continued on her voyage to St. Croix. The Argentine Government was aware of the participation of the S/T HERCULES in the search for survivors. At no time during the Falklands War, did the S/T HERCULES aid or support British forces in the Atlantic Ocean.

SEVENTEENTH: On or about May 25, 1982, S/T HERCULES, in the course of her routine employment, commenced a return voyage in ballast from St. Croix, intending her usual passage via the South Atlantic and around Cape Horn, to Valdez.

EIGHTEENTH: On June 2, 1982, Argentine military aircraft attacked the 15,649 deadweight ton British flag tanker, WYE, in the South Atlantic.

NINTEENTH: At 1330 GMT on June 3, 1982, the U.S. Maritime Administration issued a telex to Argentina and the United Kingdom, advising both belligerents of neutral U.S. flag merchant ships and Liberian flag tankers operating in the South Atlantic. The telex stated, in part:

"3. The following Liberian-flag tankers are carrying Alaskan Oil to the U.S. Virgin Islands via Cape Horn:

HERCULES/6ZAB Enroute St. Croix, VI  
to Valdez, A1  
ETA Exclusion Zone  
8-11 June."

TWENTIETH: The S/T HERCULES, stopped briefly at Rio de Janeiro, Brazil, on June 4, 1982 for vessel support services, and resumed her voyage to Alaska. At all times she flew the Liberian flag and was painted and outfitted as a commercial tanker. Across her stern, in accordance with international law, the ship's name "HERCULES" and her home port, "Monrovia", were painted in bold faced white letters.

TWENTY-FIRST: At 1215 GMT on June 8, 1982, the Master of the HERCULES made his routine AMVER report to radio station "General Pacheco", giving the ship's name, international call sign, registry, position, course, speed, and voyage description, "Rio de Janeiro to Valdez, Alaska via Cape Horn."

TWENTY-SECOND: At 1300 GMT, on June 8, 1982, a four engine Argentine military aircraft began circling the HERCULES, which was at all times steaming on a steady course at a steady speed.

TWENTY-THIRD: At 1344, GMT, on June 8, 1982, the S/T HERCULES transmitted a second AMVER report, essentially repeating the text of the earlier 1215 GMT message.

TWENTY-FOURTH: At 1350 GMT, at 46 degrees ten minutes S., 49 degrees 30 minutes W., the S/T HERCULES was attacked by Argentine military aircraft in a low level bombing strike.

TWENTY-FIFTH: At 1430 GMT, at 45 degrees 16 minutes S., 49 degrees 25 minutes W., the S/T HERCULES was subjected to a second bombing attack by Argentine military aircraft.

TWENTY-SIXTH: At 1625 GMT, at 46 degrees 8 minutes S., 48 degrees 55 minutes W., the S/T HERCULES was subjected to a third attack by Argentine aircraft which struck the ship with air-to-surface rockets.

TWENTY-SEVENTH: Following the third attack, the S/T HERCULES changed course and steered for the nearest safe port of refuge, Rio de Janeiro, Brazil.

TWENTY-EIGHTH: At 1720 GMT and 1800 GMT, well after the end of the third attack, an Argentine shore station, call sign LOV 3, located at the Argentine Naval Base at Ushusia, Argentina, addressed a message in English to call sign 6ZAB, the S/T HERCULES, on the international distress frequency of 2182 KZ, the text of which stated:

"Steer 270 to make Argentine port. If you cannot make Argentine port you will be attacked in 15 minutes time."

**TWENTY-NINTH:** The Master of the S/T HERCULES was able to establish radio contact with the Argentine radio station confirming that the S/T HERCULES was a neutral ship in peaceful transit on the high seas and that his ship had already been attacked.

**THIRTIETH:** As a result of the bombing and rocket attacks by Argentine military aircraft the S/T HERCULES suffered extensive hull and deck damage. Additionally, a bomb penetrated the ship's starboard side, lodging in the bottom of the ship's No. 2 tank, where it remained, un-detonated.

**THIRTY-FIRST:** On June 12, 1982, the S/T HERCULES arrived at the port of refuge, Rio de Janeiro, Brazil.

**THIRTY-SECOND:** Upon arrival, Brazilian naval officers under the authority of the Captain-of-the-Port, boarded the ship and conducted a complete investigation of the circumstances surrounding the bombing of the HERCULES. The ship's logs were verified and statements were obtained from all of the ship's officers. The Brazilian Navy inquiry found nothing connected with the ship which would violate its neutral status under international law or justify the attack on that vessel.

**THIRTY-THIRD:** By reason of the attacks and the lodging of an undetonated bomb in No. 2 port wing tank, it was determined by the shipowner, United Carriers, Inc., due to the hazards which would accompany an attempt to remove the undetonated bomb, that it was compelled to order the scuttling of the S/T HERCULES.

**THIRTY-FOURTH:** On or about July 20, 1982, S/T HERCULES was scuttled, along with her bunkers, at a point approximately 250 miles from the Brazilian Coast.

**THIRTY-FIFTH:** Under international law, belligerents engaged in war are prohibited from attacking neutral merchant ships on the high seas.

**THIRTY-SIXTH:** S/T HERCULES at all times during the Falklands/Malvinas conflict maintained her status as a neutral vessel, did not aid or support British forces in the South Atlantic, and flew the Liberian flag.

**THIRTY-SEVENTH:** At the time of the attack, the S/T HERCULES was 572 nautical miles from the nearest point of the Argentine mainland and 475 nautical miles from the nearest point of contact with the Falkland Islands.

**THIRTY-EIGHTH:** The unprovoked attacks on S/T HERCULES were thus a violation of the law of nations and of the laws of the United States, in that they were committed against the unarmed merchant vessel of a neutral country in innocent passage upon the high seas.

**THIRTY-NINTH:** The appearance and attack by Argentine military aircraft so soon after the AMVER report transmitted by the S/T HERCULES gives rise to the inference that Argentina made improper use of the AMVER System for military purposes, in violation of international law and practice.

**FORTIETH:** As a direct result of the unprovoked attack on the S/T HERCULES, AMERADA HESS SHIPPING CORPORATION lost the bunkers which the ship had on board consisting of 11,438 long tons of fuel oil and 12 long tons of diesel oil valued at \$1,901,259.07.

**FORTY-FIRST:** Since the loss of the S/T HERCULES, plaintiff's attorneys have tried unsuccessfully to obtain competent Argentine counsel who would pursue a claim directly against Argentina in the Courts of that country. Argentine attorneys have declined to handle the matter because of the politically charged nature of the claim and

knowledge that the claim is opposed by the Argentine Government.

WHEREFORE, plaintiff prays:

(1) That a decree be entered in favor of plaintiff, AMERADA HESS SHIPPING CORPORATION, in the amount of \$1,901,257.07, together with interest, costs, and attorneys' fees;

(2) For such other, further, and different relief as to this Court may deem just and proper in the premises.

Dated: New York, New York

June 7, 1985.

By: /s/ DOUG BURNETT

A Member of the Firm

(Attorneys for Plaintiff)

(AMERADA HESS SHIPPING CORPORATION)

HILL RIVKINS CAREY LOESBERG O'BRIEN  
& MULROY

21 West Street

New York, New York 10006

(212) 825-1000

cc: Minister of Foreign Affairs  
Ministry of Foreign Affairs  
3 East Arenales 761  
Buenos Aires 1061  
Argentina

### VERIFICATION

STATE OF NEW YORK :

: SS:

COUNTY OF NEW YORK :

DOUGLAS R. BURNETT, of full age, being duly sworn according to law, upon his oath deposes and says that he is an associate in the firm of HILL RIVKINS CAREY LOESBERG O'BRIEN & MULROY, Esqs., attorneys for plaintiff herein; that he has read the foregoing Verified Complaint and that the allegations contained therein are true to the best of his information, knowledge and belief; and that the source of deponent's knowledge are the reports and information received from the plaintiff, its agents, attorneys, and other third parties.

/s/ DOUG BURNETT  
DOUGLAS R. BURNETT

Sworn and subscribed to  
before me this 7th day  
of June, 1985.

/s/ THOMAS D. TOY  
Notary Public

THOMAS D. TOY  
Notary Public, State of New York  
No. 30-4003400  
Qualified in Nassau County  
Commission Expires March 30, 1967

**COMPLAINT (UNITED CARRIERS)**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED CARRIERS, INC.,

*Plaintiff,*

- against -

ARGENTINE REPUBLIC,

*Defendant.*

**COMPLAINT**

Plaintiff UNITED CARRIERS, INC., by its attorneys Burke & Parsons, complaining of Defendant ARGENTINE REPUBLIC, alleges upon information and belief as follows:

**FIRST:** This action arises under the Alien Tort Claims Act, 28 U.S.C. §1330 (1982), as hereinafter more fully appears.

**SECOND:** At all times hereinafter mentioned, Plaintiff United Carriers, Inc. was and still is a corporation duly organized and existing under the laws of the Republic of Liberia, and was the owner of the tank vessel S/T Hercules (the "Vessel").

**THIRD:** The Vessel was built in 1971, had an overall length of 1,058 feet, a beam of 158 feet, and deadweight tonnage of 220,117 tons. She was registered under the laws and flew the flag of the Republic of Liberia.

**FOURTH:** At all relevant times, the Republic of Liberia was a neutral country and the Vessel was a neutral, unarmed merchant vessel.

**FIFTH:** From the opening of the Trans-Alaska Pipeline ("Pipeline") in 1977 until July 1982, the Vessel was con-

tinuously employed in the domestic trade of the United States, carrying full cargoes of Alaskan North Slope crude oil from the southern terminus of the Pipeline at Valdez, Alaska around the southern tip of South America to the Hess Oil Virgin Islands Company refinery at St. Croix, United States Virgin Islands.

**SIXTH:** On or about April 2, 1982, the armed forces of the Argentine Republic undertook an invasion of the Falkland Islands/Islas Malvinas resulting in hostilities between the Argentine Republic and Great Britain.

**SEVENTH:** Having discharged her cargo of Alaskan North Slope crude oil at St. Croix, on or about May 25, 1982 the Vessel commenced a return voyage in ballast from St. Croix to Valdez.

**EIGHTH:** On or about June 8, 1982, at a point approximately 572 nautical miles from the nearest point of the Argentine mainland, and approximately 475 nautical miles from the nearest point of contact with the Falkland Islands/Islas Malvinas, the Vessel was subjected to three separate bombing attacks, without warning, by aircraft of the Argentine armed forces.

**NINTH:** The locations of the attacks were outside of the zones of exclusion designated by both the Argentine Republic and Great Britain.

**TENTH:** The unprovoked attacks on the Vessel were in violation of the law of nations and of the laws of the United States, in that they were committed against an unarmed merchant vessel of a neutral country in innocent passage upon the high seas.

**ELEVENTH:** By reason of the attacks, the Vessel suffered damage and diverted to Rio de Janeiro, Brazil as a port of refuge, where she arrived on or about June 12, 1982.

**TWELFTH:** On or about June 13, 1982, an undetonated bomb was found in one of the Vessel's tanks, which caused

the Government of Brazil to order the Vessel to leave port immediately.

THIRTEENTH: Following further inspections of the Vessel conducted while she was anchored offshore, the decision was made to scuttle the Vessel to avoid the risks inherent in an attempt to remove the bomb.

FOURTEENTH: On or about July 20, 1982, the Vessel was towed to a point approximately 250 nautical miles from the Brazilian coast and scuttled with the permission of the Government of Brazil.

FIFTEENTH: By reason of the premises, Plaintiff UNITED CARRIERS, INC. has sustained damages in the amount of \$10,000,000 plus interest.

WHEREFORE, Plaintiff UNITED CARRIERS, INC. respectfully prays that the Court order, adjudge and decree that Plaintiff have a judgment against Defendant ARGENTINE REPUBLIC for the claim asserted herein, together with the interest and costs, and Plaintiff further prays for such other, further, and different relief as to this Court may seem just and proper in the premises.

Dated: New York NY  
June 7, 1985

BURKE & PARSONS  
Attorneys for Plaintiff  
UNITED CARRIERS, INC.  
1114 Avenue of the Americas  
New York NY 10036  
(212) 354-3800  
Ref: 6955

By /s/ Raymond J. Burke Jr.  
A Member of the Firm

**NOTICE OF MOTION BY DEFENDANT TO DISMISS  
AGAINST AMERADA HESS**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
85 Civ. 4365 (RLC)**

AMERADA HESS SHIPPING CORPORATION,  
*Plaintiff,*  
v.

ARGENTINE REPUBLIC,  
*Defendant.*

**NOTICE OF MOTION BY DEFENDANT TO DISMISS**

MOTION BY:

KAPLAN RUSSIN VECCHI  
& KIRKWOOD  
Attorneys for the  
Defendant Argentine  
Republic

DATE, TIME AND PLACE  
OF HEARING:

September 27, 1985, at 10:00  
a.m., Courtroom 518, United  
States Courthouse, Foley  
Square, New York, New York  
10017

RELIEF SOUGHT:

An order, pursuant to Rule  
12(b), F.R.Civ.P., dismissing  
the action (1) for lack of juris-  
diction over the subject matter  
and (2) for lack of jurisdiction  
over the person

SUPPORTING PAPERS:

Memorandum of Law in Sup-  
port of Defendant's Motion to  
Dismiss

## ANSWERING PAPERS:

Pursuant to Rule 6,  
F.R.Civ.P., and Rule 3 of the  
Civil Rules of this Court, an-  
swering papers, if any, shall  
be served at least three days  
before the return date.

DATED: September 11, 1985

KAPLAN RUSSIN & VECCHI  
1218 16th Street, N.W.  
Washington, D.C. 20036  
(202) 638-0060

By: /s/ BRUNO A. RISTAU  
BRUNO A. RISTAU

KAPLAN RUSSIN VECCHI  
& KIRKWOOD  
28 West 44th Street  
Suite 200  
New York, New York 10036

By: /s/ JEANNE FERRIS SIEGEL  
JEANNE FERRIS SIEGEL

Attorneys for the  
Defendant Argentine  
Republic

TO: HILL RIVKINS CAREY LOESBERG  
O'BRIEN & MULROY  
21 West Street - 21st Floor  
New York, New York 10006

Attorneys for the Plaintiff  
Amerada Hess Shipping Corporation

**NOTICE OF MOTION BY DEFENDANT TO DISMISS  
AGAINST UNITED CARRIERS**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
85 Civ. 4378 (RLC)**

UNITED CARRIERS, INC. CORPORATION,

*Plaintiff.*

v.

ARGENTINE REPUBLIC,

*Defendant.*

**NOTICE OF MOTION BY DEFENDANT TO DISMISS**

MOTION BY:

KAPLAN RUSSIN VECCHI  
& KIRKWOOD  
Attorneys for the  
Defendant Argentine  
Republic

DATE, TIME AND PLACE  
OF HEARING:

September 27, 1985, at 10:00  
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1218 16th Street, N.W.  
Washington, D.C. 20036  
(202) 638-0060

By: /s/ BRUNO A. RISTAU  
BRUNO A. RISTAU

KAPLAN RUSSIN VECCHI  
& KIRKWOOD  
28 West 44th Street  
Suite 200  
New York, New York 10036

By: /s/ JEANNE FERRIS SIEGEL  
JEANNE FERRIS SIEGEL

Attorneys for the  
Defendant Argentine  
Republic

TO: BURKE & PARSONS  
1114 Avenue of the Americas  
New York, New York 10036

Attorneys for the Plaintiff  
United Carriers, Inc.

**AFFIDAVIT OF DOUGLAS R. BURNETT IN OPPOSITION  
(AMERADA HESS)**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
Index No. 85 Civ. 4365 (RLC)**

AMERADA HESS SHIPPING CORPORATION, *Plaintiff,*  
- against -  
ARGENTINE REPUBLIC, *Defendant.*

**AFFIDAVIT IN OPPOSITION TO DEFENDANT'S  
MOTION TO DISMISS**

State of New York )  
                       )  
                       ss.  
City of New York )

DOUGLAS R. BURNETT, being duly sworn deposes  
and says:

1. I am an associate with the firm of HILL RIVKINS  
CAREY LOESBERG O'BRIEN & MULROY, which re-  
presents AMERADA HESS SHIPPING CORPORATION  
("Amerada Hess") in this litigation.

2. On September 11, 1984 attorneys for the defendant,  
ARGENTINE REPUBLIC filed a motion to dismiss this  
lawsuit. On the same date, a similar motion was made to  
dismiss the action brought by plaintiff, UNITED CAR-  
RIERS, INC., against the ARGENTINE REPUBLIC, 85  
Civ. 4378 (RLC).

3. For purposes of this motion, the positions of the  
plaintiffs, AMERADA HESS SHIPPING CORPORATION

and UNITED CARRIERS, INC., in their respective actions as against the ARGENTINE REPUBLIC are identical. For this reason, and with the oral permission of the Court, a joint brief and joint set of plaintiffs' exhibits has been filed concurrent with this Affidavit.

4. The factual allegations contained in the Statement of Facts in the joint brief are fully supported by the Plaintiffs' Joint Exhibits, numbers 1 through 41. The legal arguments, based on these facts, are fully set forth in the Plaintiffs' Joint Brief. Because of the extensive nature of the exhibits and the legal arguments filed in opposition to the defendant's Motion to Dismiss, the facts and arguments are hereby incorporated in this Affidavit by reference.

5. For all of the above reasons, the plaintiff, AMERADA HESS SHIPPING CORPORATION, respectfully prays that this Court deny the motion by the defendant, ARGENTINE REPUBLIC, to dismiss this lawsuit.

/s/ DOUG BURNETT  
DOUGLAS R. BURNETT

Sworn to me this 14th  
day of November, 1985.

/s/ THOMAS E. WILLOUGHBY, JR.  
Notary Public

THOMAS E. WILLOUGHBY, JR.  
Notary Public State of New York  
No. 60-4663321. Qual. in Westchester Co.  
Certificate Filed in New York County  
Commission Expires March 30, 1987

**AFFIDAVIT OF RAYMOND J. BURKE, JR. IN  
OPPOSITION (UNITED CARRIERS)**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**  
**Index No. 85 Civ. 4378 (RLC)**

UNITED CARRIERS, INC.,

*Plaintiff,*

- against -

ARGENTINE REPUBLIC,

*Defendant.*

**AFFIDAVIT IN OPPOSITION TO DEFENDANT'S  
MOTION TO DISMISS**

State of New York )  
                         ) ss:  
City of New York )

RAYMOND J. BURKE, JR., having been duly sworn,  
deposes and says:

1. I am a member of the firm of BURKE & PARSONS,  
attorneys for plaintiff, UNITED CARRIERS, INC.  
("United"), and am admitted to practice before this Hon-  
orable Court.

2. On September 11, 1984 attorneys for the defendant,  
ARGENTINE REPUBLIC filed a motion to dismiss this  
lawsuit. On the same date, a similar motion was made to  
dismiss the action brought by plaintiff, AMERADA HESS  
SHIPPING CORPORATION, against the ARGENTINE  
REPUBLIC, 85 Civ. 4365 (RLC).

3. For purposes of this motion, the positions of the  
plaintiffs, UNITED CARRIERS, INC. and AMERADA

HESS SHIPPING CORPORATION, in their respective actions as against the ARGENTINE REPUBLIC are identical. For this reason, and with the oral permission of the Court, a joint brief and joint set of plaintiffs' exhibits has been filed concurrent with this Affidavit.

4. The factual allegations contained in the Statement of Facts in the joint brief are fully supported by the Plaintiffs' Joint Exhibits, numbers 1 through 41. The legal arguments, based on these facts, are fully set forth in the Plaintiffs' Joint Brief. Because of the extensive nature of the exhibits and the legal arguments filed in opposition to the defendant's Motion to Dismiss, the facts and arguments are hereby incorporated in this Affidavit by reference.

5. For all of the above reasons, the plaintiff, UNITED CARRIERS, INC., respectfully prays that this Court deny the motion by the defendant, ARGENTINE REPUBLIC, to dismiss this lawsuit.

/s/ RAYMOND J. BURKE JR.  
RAYMOND J. BURKE, JR.

Sworn to me this 14th  
day of November, 1985.

/s/ Christopher H. Dillon  
Notary Public

CHRISTOPHER H. DILLON  
NOTARY PUBLIC, State of New York  
No. 31-4819700  
Qualified in New York County  
Commission Expires March 30, 1986

**EXHIBIT 1(A)—CHARTER PARTY BETWEEN UNITED CARRIERS, INC. AND AMERADA HESS SHIPPING CORPORATION DATED APRIL 26, 1977**

Esso International Inc.  
Supply & Transportation  
New York, N.Y.

Code word for this  
Charter Party  
ESSO TIME 1969

**TANKER TIME CHARTER PARTY**

New York, N.Y. April 26 1977

**DESCRIPTION OF VESSEL**

IT IS THIS DAY MUTUALLY AGREED BETWEEN UNITED CARRIERS, INC. Owner (hereinafter called "Owner") of the Liberian Steam/Tank Vessel built or to be built by Hitachi Shipyard, Sakai, Japan, called the HERCULES, of "Oil Carrier" 82,120 tons net register, classed ABS + AIE + AMS and to be so maintained during the currency of this Charter, fitted with engines of \_\_\_\_\_ Nominal, \_\_\_\_\_ Brake, 30,000 Shaft, or indicated H.P. as certified by Classification Society, and equipped with wireless telegraph to comply with existing International Regulations and to allow the Vessel to communicate with land stations, VHF Radio Telephone, [Deleted Material] and Butterworth Tank Cleaning machinery, [Deleted Material] and AMERADA HESS SHIPPING CORPORATION CHARTERER, as follows:

**DEADWEIGHT**

1. The Owner hereby declares that the Vessel can carry 216,641 tons (of 2,240 lbs.) total deadweight (as certified by Classification Society) of cargo, bunkers, water and stores on assigned summer mean draft of 63 ft. 7-5/8 in. in salt water, corresponding to a load line summer freeboard of 18 ft. 6-3/4 in. under present International Load Line Regulations, and that her loadline is marked and that the Vessel has a total capacity for bulk cargo, after deduction of 2% for expansion, of 8,925,179 cubic feet in cargo tanks, exclusive of permanent bunkers, which have a capacity, after deduction of 2% for expansion, of 9914.38 tons (of 40 cubic feet) oil fuel. In addition it is Charterer's understanding this Vessel's characteristics are approximately the

following: Suez Canal Net Registered Tons 97,787.46, Beam 48.2 meters LOA 322.3 meters. The deadweight, bulk cargo cubic capacity and SCNRT as stipulated in this charter are representations by the Owner. In the event, upon admeasurement it is determined that actual performance shows any failure to satisfy one or more such representations the hire shall be equitably decreased so as to indemnify the Charterer to the extent of such failure, this charter otherwise to remain unaffected. [Deleted Material]

#### DETAILS

2. [Deleted Material]

#### PERIOD—DELIVERY

3. The Owner hereby lets, and the Charterer hereby hires, the Vessel as herein described for the term of min 118 months max 122 months at Charterers' option [Deleted Material] hire to commence upon arrival safe port Persian Gulf, at Charterers' option, [Deleted Material] the Vessel being then ready with holds and cargo tanks, pipes and pumps [Deleted Material] in every way fitted for the service and the carriage of Crude Oil and/or Dirty Petroleum Products, and being on delivery tight, staunch and strong, after having been dry docked and painted at Owner's expense, and with pipe lines, pumps [Deleted Material] in good working condition, so far as the same can be attained by the exercise of due diligence, and with full complement of Master, Officers and Crew for a vessel of her size and character, and due diligence to be exercised to maintain her in such state during the currency of this Charter;

#### TRADE

[Deleted Material] Charterer shall be entitled to send the Vessel around Cape Horn at any time of the year. Charterer shall be allowed to breach Institute Warranties upon payment by Charterer of any additional insurance premium required by Vessel's Underwriters for such breach. See Clause 3(A)

#### COMMENCEMENT OF HIRE

4. Hire shall commence May 25/25 July 1977 [Deleted Material]

#### HIRE

5. The Charterer shall pay for the use of the Vessel hire at the rate of \$2.25 in United States currency per ton (of 2240 lbs) on Vessel's deadweight as per Clause One (1) per calendar month, payment to be made in advance monthly at New York, N.Y. by check without discount less any disbursements or advances made to the Master or Owner's Agents. Charterer shall also be entitled to deduct from hire payments any previous overpayments of hire and amounts due Charterer under clause 9 hereof. Hire shall commence from time of delivery of the Vessel as aforesaid and shall continue until the hour of her redelivery to the Owner (unless lost) at a safe Persian Gulf port at Charterers' option excluding Fao or Abadan.

#### INCREMENT

6. It is mutually understood and agreed that the [Deleted Material] following expenses and payments will apply to this Charter Party:

- a) Expenses and cost of extra victualling incurred by the Master on Charterer's account. Owners to invoice Charterers with supporting documents semi-annually \$
- b) Cost for all telephone calls, radio messages and telegrams sent for Charterer's account. Owners to invoice Charterers with supporting documents semi-annually \$
- c) Cost of all overtime worked at request of Charterer or its Agents. In this connection the Master shall prosecute his voyage with the utmost dispatch and shall render all reasonable assistance with the Vessel's crew and equipment, overtime of Officers and Crew to be worked at request of Charterer or its Agents. \$2000.00/mo.
- d) [Deleted material] \$

**DEFAULT OF PAYMENT**

7. In default of punctual and regular payment as herein specified, the Owner will notify the Charterer whereupon the Charterer shall make payment of the amount due within ten (10) days of receipt of notification from the Owner, failing which the Owner will have the right to withdraw the vessel from the service of the Charterer, without prejudice to any claim the Owner may otherwise have on the Charterer under this charter.

8. The Owner warrants that the Vessel is capable of maintaining and shall maintain throughout the period of this Charter Party on all sea passages from Seabuoy to Seabuoy a guaranteed average speed under moderate weather conditions of about 15 knots understood to mean no less than  $14\frac{1}{2}$ , and no more than  $15\frac{1}{2}$ , for adjustment of hire, in a laden condition and in ballast (speed will be determined by taking the total miles at sea divided by the total hours at sea as shown in the log books excluding stops at sea and any sea passage covered by an off hire calculation) on a guaranteed daily consumption of minimum 145 maximum 155 tons of (2,240 lbs.) of Bunker C[deleted material].

The Charterer is entitled to the full capabilities of the Vessel and the Owner warranties that the Vessel is capable of discharging a cargo of petroleum against a back pressure of 100 PSI at ship's rail at the following average rates. (excluding stripping) (maximum two grades simultaneously)

**CARGO**

Light petroleum SG.85 (viscosity less than 320 SSU at 100 degrees F) 113,000 bbls./hr.

Medium petroleum SG.76 (viscosity of 320 to 3200 SSU at 100 degrees F) 113,000 bbls./hr.

Heavy petroleum SG.98 (viscosity above 3200 SSU at 100 degrees F) 111,000 bbls./hr.

Charterer is to be compensated at \$667.73 per hour or prorata for each part of an hour that Vessel takes in excess of the pumping rates as stipulated above. The Owner understands and agrees that he will receive no credit or compensation if the Vessel is able to discharge at a rate greater than those specified

above. Any delay to Vessel's discharge caused by shore conditions shall be taken into account in the assessment of pumping performance. Pumping performance shall be reviewed in accordance with Clause 9a.

**ADJUSTMENT OF HIRE**

9. a) The speed and consumption guaranteed by the Owner in Clause 8 will be reviewed by the Charterer after three calendar months, counting from the time of delivery of the Vessel to the Charterer in accordance with this Charter Party and thereafter at the end of each three (3) calendar month period. If at the end of each twelve (12) calendar month period (or at any time during the term of this charter) it is found that the vessel has failed to maintain as an average during the preceding twelve (12) calendar months period (or for any other twelve month period during the term of this charter) the speed and/or consumption warranted, the Charterer shall be retroactively compensated in respect of such failings as follows:
- b) Speed—Payment to Charterer of \$to be equitably adjusted per hour or prorata for each part of an hour that Vessel steams in excess of the equivalent time Vessel would have taken at the guaranteed speed warranted in Clause 8 as calculated in accordance with Attachment I—"Performance Calculations".
- c) Consumption—The Owner to reimburse the Charterer for each ton of 2,240 lbs. or prorata for part of a ton in excess of the guaranteed daily consumption for main engine [Deleted Material] including any excess not borne by the Owner in accordance with the off hire clause of this Charter Party at the Charterers' contract price for the particular grade of oil at port of supply for the total period under review [Deleted Material]. To the extent the Vessel's speed is less than that warranted, fuel consumption allowed will be determined in accordance with Attachment I—"Performance Calculations".

- d) The basis for determining the Vessel performance in a and b above shall be the statistical data supplied by the master in accordance with Clause 23.
- e) Owner to have similar privileges under this Clause for receiving compensation as Charterers do should Vessel performance as concerns speed be in excess or consumption for propulsion be below the descriptions cut-lined herein.
- f) The Charterer shall provide Owner with an opportunity to review any claim submitted by Charterer under this Clause, and the Owner shall complete such review, and provide Charterer with the results thereof within 30 days from the date such claim was mailed by Charterer to Owner. Charterer may deduct from hire any amount to which it is entitled under this Clause after the expiration of 40 days from the date of Charterer's mailing of a claim relating thereto to Owner.

In the event of Charterer having a claim in respect of Vessel's performance during the final year or part of the Charter period and any extension thereof, the amount of such claim shall be withheld from Hire Payment in accordance with Charterer's estimate made about two months before the end of the Charter period and any necessary adjustment after the end of the Charter shall be made by the Owner to the Charterer or the Charterer to the Owner as the case may require.

#### **REDELIVERY ESTIMATED PAYMENT**

10. Should the Vessel be on her voyage towards the port of redelivery at the time a payment of hire becomes due, said payment shall be made for such length of time as the Owner or its Agents and the Charterer or its Agents may agree upon as the estimated time necessary to complete the voyage, [Deleted Material] and less estimated value of fuel in bunkers at the termination of the voyage, and when the Vessel is redelivered to Owner any difference shall be refunded to or paid by the Charterer as the case may require. Charterers to give 60 days notice of redelivery date.

#### **OFF-HIRE**

11. In the event of loss of time from deficiency of men or stores, breakdown of machinery, interference by Authorities, collision, stranding, fire or other accident or damage to the Vessel, not caused by the fault of the Charterer, preventing the working of Vessel for more than twelve consecutive hours, or in the event of loss of time from breach of orders or neglect of duty by the Master, Officers or Crew, or from deviation for the purpose of landing any injured or ill person on board other than any who may be carried at Charterer's request, payment of hire shall cease for all time lost until the Vessel is again in an efficient state to resume her service and has regained a point of progress equivalent to that when the hire ceased hereunder; cost of fuel consumed while the Vessel is off hire hereunder, as well as all port charges, pilotages and other expenses incurred during such period and consequent upon the putting in to any port or place other than to which the Vessel is bound, shall be borne by the Owner; but should the Vessel be driven into port or to anchorage by stress of weather or on account of accident to or other consideration for her cargo, such loss of time, shall be for Charterer's account. If upon the voyage the speed of the Vessel be reduced, or her fuel consumption increased, by breakdown, casualty, or inefficiency of Master, Officers or Crew, so as to cause a delay of more than twenty-four hours or an excess consumption of more than one day's fuel, hire for the time lost and cost of extra fuel consumed, if any, shall be borne by the Owner. Any delay by ice or time spent in quarantine shall be for Charterer's account, except delay in quarantine resulting from the Master, Officers or Crew having communications with the shore at an infected port, where the Charterer has given the Master adequate written notice of the infection, which shall be for Owner's account, as shall also be any loss of time through detention by authorities as a result of charges of smuggling or of other infraction of law by the Master, Officers or Crew. Notwithstanding the foregoing provisions no time will be allowed Owner in excess of 144 hours annually.

#### **CHARTERERS' ELECTION**

12. The time the Vessel is off hire during the original term of this Charter or any extension thereof, pursuant to the pro-

visions of this Charter, shall be added to the original term or the extension during which the time off occurs, if the Charterer so elects and gives the Owner written notice of such election at least 90 days prior to expiry of the original term or extension during which the time off occurs, but time off during the original term may not be added to any extension thereof.

#### **LOSS OF VESSEL**

13. Should the Vessel be lost or become a constructive total loss, hire shall cease on the day of her loss or constructive total loss, and if missing, from the date when last heard of, and any hire paid in advance and not earned shall be returned to the Charterer. If the Vessel is missing or off hire at the time when hire becomes payable, payment of said hire shall be suspended until safety is ascertained or the off hire period ceases.

#### **LIENS**

14. The Owner shall have an absolute lien on all cargoes and subfreights for all amounts due under this Charter, and Charterer shall have a lien on the Vessel for all moneys paid in advance and not earned and for the value of fuel in bunkers.

#### **DETENTION BY LEGAL ACTION**

15. In the event of detention of the Vessel by Authorities at home or abroad in consequence of legal action against the Vessel or Owner whereby the Vessel is rendered unavailable for Charterer's service for a period of 60 days, unless brought about by the act or neglect of the Charterer, the Charterer, by prompt written notice, shall have the election to cancel this Charter or to suspend same until the service can again be resumed, without prejudice to any right of claim for damage which the Charterer may have in the premises. Payment of hire to cease during time the Vessel may be out of Charterer's service by the cause mentioned in this clause, unless the time out is less than 24 hours in which event there is to be no interruption in hire payments.

#### **DRYDOCKING**

16. a) Owner, at its expense, shall drydock, clean and paint Vessel's bottom, and make all overhaul and other nec-

essary repairs at approximately twelve (12) month intervals for which purpose Charterer shall allow Vessel to proceed to an appropriate port. Owner shall be solely responsible, therefor, and also for gasfreeing the Vessel, upon each occasion. All towing, pilotage fuel, water and other expenses incurred while proceeding to and from, and while in drydock, shall also be for Owner's account.

b) In case of drydocking pursuant to this clause at a port where Vessel is to load, discharge or bunker, under Charterer's orders, hire shall be suspended from the time the Vessel receives free pratique on arrival, if in ballast, or upon completion of discharge of cargo, if loaded, until Vessel is again ready for service. In case of drydocking at a port other than where Vessel loads, discharges, or bunkers, under Charterer's orders, the following time and bunkers shall be deducted from hire: Total time and bunkers including repair port call for the actual voyage from last port of call under Charterer's orders to next port of call under Charterer's less theoretical voyage time and bunkers for the direct voyage from said last port of call to said next port of call. Theoretical voyage will be calculated on the basis of the seabuoy to seabuoy distance at the warrantied speed and consumption per clause 8.

#### **OWNER TO PROVIDE**

17. The Owner shall provide and pay for all provisions, deck and engine room stores, galley and cabin stores and galley and crew fuel, and insurance on the Vessel; wages of the Master, Officers and Crew; consular fees pertaining to the Master, Officers and Crew, and all fresh water used by the Vessel.

#### **OWNER GUARANTEES**

18. The Owner guarantees the Vessel is constructed and equipped to carry four grades only two grades may be loaded or discharged simultaneously of oil. If for any reason Vessel, upon arrival at loading port, is unable to load the required number of grades, Charterer will do its utmost to provide a suitable

cargo consistent with Vessel's capabilities; however, if this is not possible Vessel is to proceed to the nearest repair port in ballast and repair all bulkhead leaks necessary, any time and expense being for Owner's account.

#### FUEL PORT CHARGES ETC

19. The Charterer (except during the period when the Vessel is off hire) shall provide and pay for all fuel except for galley and Crew as provided in Clause Seventeen (17). The Charterer shall also pay for all port charges, light dues, dock dues, Panama and other Canal dues, pilotage, consular fees, except those pertaining to Master, Officers and Crew, tugs necessary for assisting the Vessel in, about and out of port for the purpose of carrying out this Charter, agencies, commissions, expenses of loading and unloading cargoes, and all other charges whatsoever except those herein stated as payable by the Owner. The Owner shall, however, reimburse the Charterer for any fuel used or any expenses incurred in making a general average sacrifice or expenditure, and for any fuel consumed during drydocking or repair of the Vessel.

#### BUNKERS

20. The Charterer shall accept and pay for all oil fuel in the Vessel's bunkers upon commencement of hire, and the Owner shall pay for all oil fuel in the Vessel's bunkers on the expiry of this Charter at Charterers' current contract prices of the ports where the hire begins and ends respectively, or at Charterers' current contract notices at the nearest recognized port where they may be secured.

Maximum Bunker Fuel Oil on delivery and redelivery shall be as per mutual agreement.

#### DUTIES OF THE MASTER

21. The Master, although appointed by the Owner, shall be under the orders and direction of the Charterer as regards employment of the Vessel, Agencies, or other arrangements.

#### MASTER AND OFFICERS

22. If the Charterer shall have reason to be dissatisfied with the conduct of the Master, or Officers, the Owner shall, on receiving particulars of the complaint, investigate it, and if necessary make a change in the appointments.

#### INSTRUCTIONS/SAILING DIRECTIONS

23. The Master shall be furnished by the Charterer, from time to time, with all requisite instructions and sailing directions, and both he and the Engineers shall keep full and correct logs of the voyages, which are to be patent to the Charterer and its Agents, and abstracts of which are to be sent to the Charterer from each port of call.

#### BILLS OF LADING

24. Bills of Lading are to be signed at any rate of freight the Charterer or its Agents direct, without prejudice in this Charter, the Master attending daily, if required, at the offices of the Charterer or its Agents, to do so. However, at Charterer's option, Charterer and/or its Agents may sign Bills of Lading on behalf of the Master. The Charterer hereby agrees to indemnify the Owner against all consequences or liabilities that may arise from the Master, Charterer, or its Agents signing Bills of Lading or other Documents inconsistent with this Charter, or from any irregularity in papers supplied by the Charterer or its Agents, or from complying with its or its Agent's orders.

#### USE OF VESSEL

25. The whole reach and burthen of the Vessel (but not more than she can reasonably stow and safely carry) shall be at the Charterer's disposal, reserving proper and sufficient space for Vessel's Officers, Crew, Master's cabin, tackle, apparel, furniture, fuel, provisions and stores[,] and required spare parts.

#### GRADES

26. The Master will not unreasonably apply a maximum rate per hour or number of grades when loading cargo. Supplier will be able to load the Vessel at the rates they deem necessary

having due regard to the safety of the Vessel. If requested by Charterer, the Master will agree to discharge more than one grade simultaneously, provided the Master is satisfied the Vessel's pumps and cargo lines are in a condition to permit such discharge. Should at any time the condition of the Vessel's pumps and cargo lines not permit loading and/or discharge of more than one grade simultaneously, the Owner will agree to carry out necessary repairs as early as possible to enable the Vessel to load and/or discharge more than one grade simultaneously.

#### BREAK BULK CARGO

27. [Deleted Material]

#### EQUIPMENT

28. The Charterer, subject to the Owner's approval, shall be at liberty to fit any additional pumps and/or gear for loading or discharging cargo it may require beyond what is on board at the commencement of the Charter, and to make the necessary connections with steam or water pipes, such work to be done at its expense and time, and such pumps and/or gear so fitted to be considered its property, and the Charterer shall be at liberty to remove it at its expense and time during or at the expiry of this Charter; the Vessel to be left in her original condition to the Owner's satisfaction. However, the owners shall equip the vessel with the necessary portable fittings for the cargo and bunkering manifold to accept 8"-10" or 12" ASA standard loading and discharging hoses or loading arms. In addition, 60,000 DWT vessels and upward shall have abroad 14" and 16" fittings.

#### CONDITION OF TANKS

29. Vessel is to be redelivered to the Owner at the expiry of this Charter in a clean or dirty condition at Charterer's option.

#### PREVIOUS CARGOES

30. The last two successive cargoes carried, or to be carried, by the Vessel immediately preceding her entering upon this

Charter consisted, or will consist of Crude Oil and/or Dirty Petroleum Products.

#### SAFE BERTH

31. [Deleted material] See Clause 31(A).

#### DAMAGE TO OR CLAIMS ON CARGO

32. The Owner guarantees that the Vessel is constructed and equipped to carry, without admixture, at least four only two grades may be loaded or discharged simultaneously qualities or descriptions of oil; but subject to this, neither the Owner nor the Vessel shall be responsible for any admixture if more than one quality of oil is shipped, nor for leakage, contamination or deterioration in quality of the cargo unless the admixture, leakage, contamination or deterioration results from (a) unseaworthiness existing at the time of loading or at the inception of the voyage which was discoverable by the exercise of due diligence, or (b) error or fault of the servants of the Owner in the loading, care or discharge of the cargo.

#### INJURIOUS CARGO

33. No injurious cargoes, including acids that are injurious to the Vessel, are to be shipped, nor any voyage to be undertaken or goods or cargoes loaded that would involve risk of seizure, capture or penalty by rulers or governments, [deleted material].

#### VOLATILE CARGOES

34. [Deleted Material]

#### NEGLIGENCE OF PILOTS, ETC.

35. Neither the Charterer nor its Agents, nor any of its Associated or Affiliated Companies, nor any of their employees, shall be responsible for any loss, damage or liability arising from any negligence, incompetence or incapacity of any pilot, stevedore, longshoreman or the personnel of any tug or arising from the terms of the contract of employment thereof or for any unseaworthiness or insufficiency of any tug or tugs, launches or other craft, the services for which are arranged by the Char-

terer, and the Owner agrees to indemnify and hold Charterer harmless against any and all such loss, damage or liability but such indemnity shall not exceed the amount to which Owners would have been entitled to limit their liability if they had themselves arranged for such pilots, tug boats or stevedores.

#### **HOUSE FLAG**

36. The Charterer shall be allowed to fly its house flag and to paint the Vessel's funnel with its own colors if desired at Charterer's expenses.

#### **LAWS**

37. This Charter shall, so far as possible, be governed by the laws of the United States of America, except in cases of general average, which shall be adjusted, stated and settled according to York/Antwerp Rules excluding Rule 22 1974 and, as to matters not provided for by these rules, according to the laws and usages at the port of New York/[deleted] if a General Average statement is required, it shall be prepared at such port or place in the United States of America/[deleted] as selected by the Owner, unless otherwise mutually agreed, by an adjuster appointed by the Owner and approved by the Charterer, who shall attend to the settlement and the collection of the General Average, subject to customary charges. General Average Agreements and/or security shall be furnished by Owner and/or Charterer, and/or owner and/or consignee of cargo, if requested. Any cash deposit begin made as security to pay General Average and/or salvage shall be remitted to the Average Adjuster and shall be held by him at his risk in a special account in a duly authorized and licensed bank at the place where the General Average statement is prepared. Should the Vessel put into a port of distress or be under average, she is to be consigned to the Owner's Agents, paying them the usual charges and commissions.

#### **LIABILITY**

38. Any provisions of this Charter to the contrary notwithstanding, the Owner shall have the benefit of all limitations of, and exemptions from, liability accorded to the Owner or Char-

tered Owner of Vessels by any statute or rule of law for the time being in force.

#### **JASON CLAUSE**

39. In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owner is not responsible, by statute, contract or otherwise, the cargo, shippers, consignees, or owners of the cargo shall contribute with the Owner in General Average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving ship is owned or operated by the Owner, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the Owner or his Agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery.

#### **EXCEPTIONS**

40. The Vessel, her Master and Owner shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage arising or resulting from: any act, neglect, default or barratry of the Master, pilots, mariners or other servants of the Owner in the navigation or management of the Vessel; fire, unless caused by the personal design or neglect of the Owner; collision, stranding, or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or vice of the cargo; any act or omission of the Charterer or Owner, shipper or consignee of the cargo, their Agents or representatives; insufficiency of packing; insufficiency or inadequacy of marks; explosion, bursting of boilers breakage of shafts or any latent defect in hull, equipment or machinery; unseaworthiness of the Vessel unless caused by want of due diligence on the part of the Owner to make the Vessel seaworthy or to have her properly

manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault or privity of the Owner. And neither the Vessel, her Master or Owner, nor the Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder arising or resulting from:—act of God; act of war; perils of the seas; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people, or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion. Vessel shall have liberty to sail with or without pilots, to tow or to be towed, to go to the assistance of vessels in distress and to deviate for the purpose of saving life or property or of landing any ill or injured person on board. This clause is not to be construed as in any way affecting the provisions for cessation of hire as provided in this Charter.

#### SALVAGE

41. All salvage moneys earned by the Vessel shall be divided equally between the Owner and the Charterer after deducting Master's, Officers' and Crew's share, legal expenses, hire of Vessel during time lost, value of fuel consumed, repairs of damage, if any, and any other extraordinary loss or expense sustained as a result of the service, which shall always be a first charge on such money.

#### WAR CLAUSES

42. No contraband of war shall be shipped, but Petroleum and/or its products shall not be deemed contraband of war for the purpose of this clause unless shipped or intended to be shipped to or intended for a country involved in war; nor shall the Vessel be required to enter any port that is in a state of blockade, or where hostilities are in progress, or any war zone, or zone deemed a danger zone in consequence of the existence of war, or actual hostilities, without the consent of the Owner, and if such consent be given then the Charterer will pay the cost of insuring the Vessel against all war risks in an amount

equal to the value under her ordinary policy but not more than \$25,000,000.00.

#### WAR-WAGES ETC.

43. In the event of the existence of war, or actual hostilities and the continuance of this Charter, the Charterer shall assume the proved additional cost of wages and insurance properly incurred in connection with the Master, Officers and Crew as a consequence of such war or actual hostilities.

#### REQUISITION

44. Should the Vessel be requisitioned by any Government or Governmental Authority during the period of this Charter, she shall be off hire hereunder during the period of such requisition, and any hire or other compensation paid in respect of such requisition shall be for the Owner's account. The time the Vessel is on any such requisition shall count as part of the period provided in Clause Three (3) of this Charter.

#### CHAMBER OF SHIPPING

45. Chamber of Shipping War Risks Clauses (Tankers) 1952, as attached, are deemed to be incorporated in this Charter Party.

#### LAY-UP

46. [Deleted Material] See Clause 46(A).

#### DAMAGES

47. Damages for breach of this Charter shall include all provable damages and all costs and attorney fees incurred in any action or proceeding hereunder.

#### DEMISE

48. Nothing herein contained shall be construed as creating a demise of the Vessel to the Charterer.

#### CLAUSE PARAMOUNT

49. All Bills of Lading issued hereunder shall have effect subject to the provisions of the Carriage of Goods by Sea Act

of the United States, approved April 16, 1936, which shall be deemed to be incorporated therein, and nothing therein or herein contained shall be deemed a surrender by the Owner of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of any Bill of Lading issued hereunder be repugnant to said Act to any extent, such term shall be void to that extent but no further.

#### BOTH TO BLAME CLAUSE

50. If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Owner in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder shall indemnify the Owner against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Owner. The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or object are at fault in respect of a collision or contact.

#### OIL POLLUTION AVOIDANCE

51. The Owner agrees to participate in Charterer's program covering oil pollution avoidance work in Charterer's own vessels. Such program prohibits discharge overboard of all oily water, oily ballast or oil in any form of a persistent nature, except under extreme circumstances whereby the safety of the Vessel, cargo or life at sea would be imperiled.

Upon notice being given to the Master by radio or other means that Oil Pollution Avoidance controls are required, the Master will contain on board the Vessel all oily residues from consolidated tank washings, dirty ballast etc., in one compartment after separation of all possible water has taken place.

The oil residues will be pumped ashore at the loading or discharging terminal, either as segregated oil, dirty ballast,

commingled with cargo or as is possible for Charterer to arrange with each cargo.

If the Charterer requires that demulsifiers shall be used for the separation of oil/water, such demulsifiers shall be supplied by Charterer at its expense.

The Owner agrees to instruct the Master to furnish Charterer with a report covering oil pollution avoidance for each voyage of the Vessel throughout the Charter Party period.

#### ARBITRATION

52-53. [Material cut off] and all differences and disputes of whatsoever [word cut off] out of this Charter shall be put to arbitration in the City of New York pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such arbitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration. If the other party shall not, by notice served upon an officer of the first moving party within twenty days of the service of such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person with precisely the same force and effect as if said second arbitrator has been appointed by the other party. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either arbitrator may apply to a judge of any court of maritime jurisdiction in the city above-mentioned for the appointment of a third arbitrator, and the appointment of such arbitrator by such Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on an

officer of the other party to specify further disputes or differences under this Charter for hearing and determination. Awards made in pursuance to this clause may include costs, including a reasonable allowance for attorney's fees, and judgment may be entered upon any award made hereunder in any Court having jurisdiction in the premises.

#### SUBLET

54. Charterer shall have the right to sublet the Vessel and to assign the charter to any subsidiary or affiliate corporation. However, Charterer shall always remain responsible for the fulfillment of this Charter in all its terms and conditions.

#### TOVALOP

55. [Deleted Material] P&I TOVALOP CLAUSE as attached is deemed incorporated in this Charter Party.

#### MARGINAL HEADINGS

56. The marginal headings in this document are not part of this Charter Party and are not relevant to its interpretation.

Clauses 57 through 64 inclusive are deemed to be incorporated in this Charter Party.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS CHARTER TO BE EXECUTED IN DUPLICATE THE DAY AND YEAR HEREIN FIRST ABOVE WRITTEN.

UNITED CARRIERS, INC.

[Signed]  
Witness to Signature of

[Signed]

AMERADA HESS SHIPPING  
CORPORATION

[Signed]  
Witness to Signature of

[Signed]

**EXHIBIT 1(D)—U.S. MARITIME ADMINISTRATION  
TELEX TO UNITED KINGDOM AND ARGENTINA  
DATED JUNE 3, 1982 ADVISING OF U.S. "INTEREST  
VESSELS"**

DISPATCH [time & date stamp illegible]

VZJZCBEA582  
PTTUZYUW RUEBBEAZ316 154 1329-UUUU—RUEHC  
RUEHLD RUESUA RUESBA.  
ZNR UUUUU  
P J1330Z JUN 82  
FM MARAD WASHDC//SHEAR MARITIME  
ADMINISTRATOR//  
TO ZEN/MOD UK NAVY LONDON  
ZEN/EMBASSY OF ARGENTINA WASHINGTON DC  
INJD RUEHC/SECSTATE WASHINGTON DC  
RUEHC/DEPT OF STATE WASHINGTON DC //EB/TT/MA//  
RUESUA/AMCONSUL RIO DE JANEIRO //MARITIME  
ATTACHE//  
RUessa/AMEMBASSY BUENOS AIRES  
BT  
UNCLAS SITE MARAD \*A-0316

1. THE FOLLOWING U.S. FLAG MERCHANT VESSELS  
ARE SCHEDULED TO TRANSIT THE VICINITY OF THE  
FALKLAND ISLANDS AS INDICATED:

NAVE/IRCS LAST POSITION/COURSE DESTINATION  
SPEED/DATE

SANTA MARIA/KAFC ENROUTE SANTOS, BR  
ETA 3 JUNE  
ETA BUENOS AIRES, AR  
4 JUNE. ESTIMATED  
VICINITY EXCLUSION  
ZONE 7-8 JUNE TO  
TRANSIT STRAIT OF  
MAGELLAN EN ROUTE  
VALPARAISO, CI.

2. THE FOLLOWING U.S. FLAG MERCHANT VESSELS  
ARE SCHEDULED TO CALL AT ARGENTINE PORTS AS  
FOLLOWS:

JA- 60

NORMADDRACO/  
WWSD            ARRIVED            ETD BUENOS  
                  BURNOS AIRES,      AIRES, AR,  
                  AR                  2 JUNE  
                  31 MAY

NORMADRIGEL/  
WWSF            ETA SANTOS,      ETA BUENOS  
                  BR, 9 JUNE         AIRES, AR,  
                                      12 JUNE

3. THE FOLLOWING LIBERIAN-FLAG TANKERS ARE  
CARRYING ALASKAN OIL TO THE U.S. VIRGIN ISLANDS  
VIA CAPE HORN:

NORTHERN LION/AJE	EN ROUTE VALDEZ, AL TO ST CROIX, VI	ETA EXCLUSION ZONE 7-10 JUNE
HERCULES/ 6ZAB	ENROUTE ST CROIX, VI TO VALDEZ, AL	ETA EXCLUSION ZONE 8-11 JUNE

JA- 61

**EXHIBIT 1(E)—TELEX FROM MASTER DATED JUNE  
11, 1982 CONFIRMING TIME AND POSITION OF SHIP  
DURING ATTACKS**

001906 82JN [illegible]

R357  
RX-TLX 1943 EST O 11/82

VIA COMSAT  
06/11 232ZZ  
AMFRHESS NYK

AMERHESS—CHARTERER—NEWYORK  
FM HERCULES 6/11/82

Y6/11 ATTACKED BY UNIDENTIFIED WAR PLANES  
JUNE EIGHT 1982 FIRST ATTACK AT 1350 GMT PO-  
SITION ACCURATE BASED SATELLITE  
FIX 4610S 4930W

SECOND ATTACK 1430 GMT POS. 4616S 4925W

THIRD ATTACK 1625 GMT POS. 4608S 4855W

MASTER HERCULES

AMERHESS NYK A

\*\*\*\*\*

DIAL 607 FOR MARISAT TELEX

THEY DISC.

ELAPSED TIME 00:01:40

JA- 62

**EXHIBIT 1(H)—TELEX FROM MASTER CONCERNING  
ATTACK RELAYED TO U.S. MARITIME  
ADMINISTRATION DATED JUNE 9, 1982**

"MARAD gave G-TGC this tlx"

[Handwritten]

82 JUN 11 AM 0:33

MARAD WSH  
1720 EDT

B420347 MOC UI  
1200EDT JUNE 10/82 HW RH/MGMT  
TO MARITIME ADMINISTRATION WASHINGTON,  
D.C.

FOR ADMIRAL HAROLD E. SHEAR  
FOLLOWING CABLE RECEIVED FROM MASTER  
HERCULES QUOTE

TO MOC NEWYORK  
FM HERCULES 6/9/82

URGENT—  
JUNE 6TH AT 1218 GMT OSL PACHECO RADIO  
FOLLOWING MESSAGE  
AMVER - GENERAL PACHECO-LIBERIAN TANKER  
HERCULES 6ZAB POSITION LAT 4548S LONG.  
4929W

TIME 1215 GMT COURSE 193 SPEED 16.3 EN-  
ROUTE FROM RIO DE JANEIRO TO VALDEZ  
ALASKA VIA CAPE HORN UNQUOTE  
AT 1300GMT AIR RECONNAISSANCE BY FOUR  
TURBO PROPELERS PLANE

AT 1344 QSL FROM PACHECO RADIO FOLLOWING  
MESSAGE QUOTE LIBERIAN HERCULES 6ZAB 2  
46.0S 49.5W 081250Z SPEED 16.2 STOP FROM  
ABOVE POSITION PROCEEDING TO 56.20S 5000W  
TO 56.20S 7000W THENCE RHUMB LINE TO VAL-  
DEZ ALASKA

JA- 63

**RGDS - MASTER UNQUOTE**

AT ABOUT 1350 GMT POSITION 46.10S 49.30W  
WHILE STEERING 131 ATTACKED FIRST TIME BY  
UNIDENTIFIED FOUR PROPELLERS ANTISUB/AM-  
PHIB. PLANE DROPPING EIGHT BOMBS (WE  
THINK DEPTH BOMBS) FOUR FROM EACH OF  
THE PLANE'S WING, HITTING VESSEL ON PORT-  
SIDE, HULL, DECK DERICKS RADIO ANTENNAS  
ETC.. BY THE SHOCKS OF EXPLODING BOMBS,  
ENGINE TRIPPED, RESUMED THE FULL SPEED  
IMMEDIATELY, AND VARIOUS COURSES. WE  
WERE FLYING THE LIBERIAN FLAG, AND AFTER  
ATTACK HOISTED ALSO WHITE FLAG.

AT ABOUT 1430 GMT POS. 4616S 4925W WE WERE  
ATTACKED A SECOND TIME BY THE SAME  
PLANE WITH EIGHT BOMBS WHICH EXPLODED  
AT SEA NEAR POOP ON STBD SIDE, WHILE  
STEERING COURSE 046.

**EXHIBIT 1(I)—U.S. COAST GUARD RECORD OF  
ATTACK**

**Wednesday, 09 June 1982**

The war in the South Atlantic expanded in scope yesterday morning, as the first non-combatant merchant vessel came under attack by unidentified aircraft. Both Argentina and Great Britain disclaim the aircraft as being theirs. The Liberian registered VLCC HERCULES was enroute from St. Croix to Alaska, in ballast, when it was bombed 480 miles northeast of the Falklands.

The HERCULES was first circled for over an hour by a 4 engine propeller aircraft before it dropped depth charges on the 1076 foot vessel. Two hit the deck while others struck the starboard side. A second attack was then made by an ASW-type aircraft which dropped three more depth charges. Damaged, and listing 5 to 6 degrees, but in no immediate danger of sinking, the vessel altered course for Rio de Janeiro.

The relative calm in the aftermath of the second assault was suddenly broken after two hours as 3 jet aircraft attacked the ship. One plane fired two rockets at the HERCULES, scoring one hit. The rocket holed the main deck, but may not have exploded, and could be lodged below deck.

Following this third and final attack the master was advised by Argentine authorities via 2182 kHz "To make for the nearest Argentine port or be fired upon". The master explained his situation and was granted permission to proceed without diverting. COMLANTAREA advised RCC FALMOUTH (UK) and RCC BUENOS AIRES (AR) of the HERCULES non-combatant status and situation, while the State Department was also in contact with the two belligerents. HMS HYDRA, a British hospital ship, diverted to assist but was advised by HERCULES that none of

the 30 crewmen were injured, and that assistance was not needed.

Late last night the master confirmed that the vessel was in no immediate danger though still listing 5 to 6 degrees, and was enroute Rio at 15 knots.

**EXHIBIT 1(J)—PRESS STATEMENT****MOD PRESS STATEMENT—9TH JUNE 1982**

We have been asked by the Americans—and we understand that Argentina has been asked as well—whether there is any further information we can give on the attacks on the US leased tanker Hercules yesterday.

The Master of the tanker referred to two attacks by high winged, four engined, propeller driven aircraft. We have already made clear that no British aircraft was involved in any way in this incident and that the Hercules which was in fact in ballast—that is empty—had not at any time been involved in supplying our Task Force.

It will have been noted however that as announced on 2nd June one of our own tankers was attacked by an Argentine C130 some days ago in the same general area. That attack was unsuccessful. The C130 is a high winged, four engined, propeller driven aircraft.

One other piece of information we have which is relevant is a message sent en clair, in English and on an international distress frequency—2182 Kilohertz. This message was picked up by our hospital ships UGANDA and HYDRA. It was preceded by the call sign of an Argentine radio station (we think in Ushumia) and specifically addressed to Hercules with her call sign. This call sign fully identifies the vessel and means that there could have been no doubt as to the nature of the ship or her nationality. The message which was repeated for 30 minutes is as follows:

"Steer course 270 west to make Argentine port. If cannot make Argentine port you will be attacked in 15 minutes time".

The second attack as reported by the Master of Hercules took place [End of document as reproduced in appendix in 2d Cir.]

**EXHIBIT 1(L)—MINISTRY OF DEFENSE REPORT ON HERCULES ATTACK, DATED JUNE 9, 1983**

From: Mrs. E M McLoughlin, Defence Secretariat 5

**MINISTRY OF DEFENCE**

Main Building Whitehall London SW1A 2HB

Telephone 01-218 2190 (Direct Dialing)

01-218 9000 (Switchboard)

Messrs Clyde & Co  
Bedford Road  
Guildford  
GU1 4HA

Your reference  
PRP/PMH/2.801  
Our reference  
D/DS5/9/9/17

Date 9 June 1983

Dear Sir,

**HERCULES—AIR ATTACKS IN SOUTH ATLANTIC 9 JUNE 1982**

I am sorry to have been so long in replying to your letter of 12 April. As I said on the telephone to Mr Power on 27 April we have, as you might expect, a fair amount of paperwork covering that period!

The information you request is as follows:

1. The message was heard by all our hospital ships. Their positions as far as we have been able to ascertain were as follows:

UGANDA and HECLA—in the "Red Cross Box" North of Falkland Sound. This was a 10 mile circle around 50° 50' S, 58° 40' W

HERALD—proceeding north five days away from Montevideo.

HYDRA—proceeding south from Montevideo position 41° 30' S, 54° W

HMS HYDRA was despatched to assist until it became clear that the tanker was able to proceed.

2. The message was to call sign 6ZAB (HERCULES' call sign). The message was in English and was "Steer 270 West to make Argentine port. If you cannot make Argentine port you will be attacked in 15 minutes time".

3. The message was repeated several times between about 081720Z and 081800Z on 2182 khz.

4. No reply or other message was heard from the HERCULES.

5. The call sign used in the message was LOV 3 understood to be a station at Ushuaia. The message was heard clearly on voice.

I hope that this answers your questions satisfactorily and I also attach a copy of the MOD press release at the time.

We have not been approached by representatives of the owners of the vessel but should they do so we should, of course, provide the same information.

Yours faithfully,

/s/ [illegible]

**EXHIBIT 1(M)—U.S. COAST GUARD FLAG PLOT  
TELEPHONE LOG**

**FLAG PLOT TELEPHONE LOG**

CASE M/V HERCULES

PAGE

TIME

[HANDWRITTEN:]

2200 DIA advises that they just made MARISAT patch to ship and got following info:

POSN 44-46.55 046-35W/CSC-035%sp-15K/5-6° List/NPOC-RIO/CAPT-RENZO BATTAGLIARIN/1 tank leaking Capt says not in any immediate danger, but wants non-combatant status reemphasized to UK and AR (Being done by DOS)

Story on Attack: at 1000 Local 4 eng. prop A/C painted camouflage started circling, at 1115 attacked with depth charges, 2 hit deck, others hit hull on starboard. Then ASW type aircraft showed up and dropped 3 depth charges that landed 200m from Bridge. 2 hours later three jet A/C arrived and one fired 2 rockets at ship, one hit.

Master said he received verbal warning on 2182 for A.R. Says he spoke to AR, explained his situation and damages, and received permission to proceed without diverting to AR port.

2220 —advised Capt Welling of above said call Capt Black

2226 —advised Capt Black said no need to brief further up

**EXHIBIT 2—TRANSLATION OF LETTER REPORT OF  
REAR ADMIRAL FERNANDO CAMUS SCHERRER,  
CHILEAN NAVY, DATED MAY 14, 1985**

Letter No. 4675-2  
Punta Arenas, May 14, 1985

Attorney  
Mister  
Alfonso Ansietta Nunez  
Valparaiso

From my consideration:

1. In response to your letter of May 3, 1985, in which you requested information about the call for help to which the S/T "HERCULES" rushed to, May 5, 1982, I can inform you of the following:

a. On May 5, 1982, at 0825 the AP PILOTO PARDO of the National Navy, reached the area of the sinking of the CL BELGRANO initiating communications with the ARA (Navy of the Argentine Republic) BAHIA PARAISO of the Argentine Navy whose captain assumed the post of commander of the rescue area and assigned the search areas.

b. At the end of communications between the AP PARDO and ARA BAHIA PARAISO, the Captain of the S/T HERCULES that sailed through the area, informed the ARA BAHIA PARAISO that it continued headed North and it was ahead of its schedule, reason why he offered his cooperation to seek shipwrecked survivors. The ARA BAHIA PARAISO thanked him and assigned him a search area adjacent to the one of the AP PARDO, for which both ships maintained contact only for the exchange of information. The AP PARDO did not give instructions to the S/T HERCULES, since it was not its prerogative to do so.

c. At 2130 of the same day, the S/T HERCULES ended its participation in the search and assumed its original course.

d. The search effected by the S/T HERCULES did not have positive results.

2. On the basis of the disclosed, one can deduce a negative response to the questions formulated by Mr. Burnett in the letter dated February 28, 1985.

Greeting you attentively.

FERNANDO CAMUS SCHERRER  
Rear Admiral  
Commander in Chief 3rd Naval Zone

**EXHIBIT 4—AMERICAN EMBASSY, MONROVIA,  
LIBERIA, TELEX TO SECRETARY OF STATE,  
WASHINGTON, D.C. DATED JULY 8, 1982**

Received 8 Jul 02 1252z

UNCLASSIFIED

P 08 105 8Z JUL '82  
 FM AMEMBASSY MONROVIA  
 TO SECSTATE WASHDC PRIORITY 3288  
 INFO AMEMBASSY LONDON  
 AMEMBASSY BUENOS AIRES  
 UNCLAS SECTION 01 OF 02 MONROVIA 06814  
 E.O. 12065: N/A  
 TAGS: EWWT, LI, US, UK, FA, AR  
 SUBJECT: ATTACK ON VLCC HERCULES  
 REFERENCE: MONROVIA 6075

1. IN RESPONSE TO THE EMBASSY'S NOTE OF JUNE 12, 1982 TO THE MINISTRY OF FOREIGN AFFAIRS REGARDING THE JUNE 8 ATTACK ON THE LIBERIAN REGISTERED VESSEL U.S.-CHARTERED VLCC-HERCULES, THE FOLLOWING NOTE WAS RECEIVED ON JULY 7.
2. QUOTE: THE MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF LIBERIA PRESENTS ITS COMPLIMENTS TO THE EMBASSY OF THE UNITED STATES OF AMERICA AND HAS THE HONOR TO REFER TO THE EMBASSY'S NOTE NO. 291 OF JUNE 12, 1982, CONCERNING THE FORMAL ORAL DEMARCHE WHICH THE U.S. DEPARTMENT OF STATE MADE TO A SENIOR OFFICIAL OF THE ARGENTINE EMBASSY FOLLOWING THE JUNE 8 ATTACK ON THE LIBERIAN REGISTERED VESSEL, US-CHARTERED VLCC HERCULES, AND THE MINISTRY'S SUBSEQUENT NOTE NO. 8615/2-17 OF JUNE 18, 1982 ADVISING THAT IT HAD REQUESTED CLARIFICATION FROM BOTH THE BRITISH AND ARGENTINE GOVERNMENTS.

ALTHOUGH THE MINISTRY HAS NOT YET RECEIVED A REPLY FROM THE ARGENTINE GOVERNMENT, IT WISHES TO QUOTE THE VERBATIM TEXT OF A NOTE RECEIVED FROM HER BRITANNIC MAJESTY'S EMBASSY NEAR MONROVIA CONCERNING THIS MATTER.

"HER BRITANNIC MAJESTY'S EMBASSY PRESENTS ITS COMPLIMENTS TO THE MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF LIBERIA AND HAS THE HONOR TO REFER TO THE EMBASSY'S NOTE NO. 47 OF 25 JUNE ABOUT THE LIBERIAN-REGISTERED VESSEL HERCULES AND ITS UNDER TAKING TO REVERT TO THE MINISTRY WHEN A REPLY HAD BEEN RECEIVED FROM LONDON.

THE MASTER OF THE HERCULES REFERRED TO TWO ATTACKS BY HIGH-WINGED, FOUR-ENGINED, PROPELLER-DRIVEN AIRCRAFT. HER MAJESTY'S GOVERNMENT HAS ALREADY MADE CLEAR THAT NO BRITISH AIRCRAFT WAS INVOLVED IN ANY WAY IN THIS INCIDENT AND THAT THE HERCULES WHICH WAS IN FACT IN BALLAST—THAT IS EMPTY—HAD NOT AT ANY TIME BEEN INVOLVED IN SUPPLYING THE BRITISH TASK FORCE.

THE MINISTRY WILL NO DOUBT HAVE NOTED, HOWEVER, THAT AS ANNOUNCED ON 2 JUNE 1982 BY THE BRITISH MINISTRY OF DEFENSE, A BRITISH TANKER WAS ATTACKED BY AN ARGENTINE C130 AIRCRAFT, SOME DAYS EARLIER, IN THE SAME GENERAL AREA. THAT ATTACK WAS UNSUCCESSFUL. (THE C130 IS A HIGH-WINGED, FOUR-ENGINED, PROPELLER-DRIVEN AIRCRAFT.)

FURTHER INFORMATION AVAILABLE TO THE BRITISH AUTHORITIES AND WHICH IS RELEVANT TO THE INCIDENT, IS A MESSAGE SENT EN CLAIR IN ENGLISH AND ON AN INTERNATIONAL DISTRESS FREQUENCY-2182 KILOHERTZ. THIS MESSAGE WAS PICKED UP BY THE BRITISH HOSPITAL SHIPS UGANDA AND HYDRA. IT WAS PRECEDED BY THE CALL-SIGN OF AN ARGENTINE RADIO STATION (PROBABLY USHUAIA) AND SPECIFICALLY ADDRESSED TO HERCULES WITH HER CALL-SIGN.

THIS CALL-SIGN FULLY IDENTIFIES THE VESSEL AND MEANS THAT THERE COULD HAVE BEEN NO DOUBT AS TO THE NATURE OF THE SHIP OR HER NATIONALITY. THE MESSAGE WHICH WAS REPEATED FOR THIRTY MINUTES WAS AS FOLLOWS:-

"STEER COURSE 270 WEST TO MAKE ARGENTINE PORT. IF CANNOT MAKE ARGENTINE PORT YOU WILL BE ATTACKED IN FIFTEEN MINUTES TIME."

THE SECOND ATTACK AS REPORTED BY THE MASTER OF THE HERCULES TOOK PLACE SHORTLY AFTER THIS MESSAGE.

HER MAJESTY'S GOVERNMENT HAVE REPORTS FROM OTHER SOURCES THAT THIS BOMBING OF THE HERCULES WAS INDEED CARRIED OUT BY AN ARGENTINE AIRCRAFT."

THE MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF LIBERIA AVAILS ITSELF OF THIS OPPORTUNITY TO RENEW TO THE EMBASSY OF THE UNITED STATES OF AMERICA THE ASSURANCES OF ITS HIGHEST CONSIDERATION.

THE EMBASSY OF THE UNITED STATES OF AMERICA  
MONROVIA, LIBERIA  
JULY 5, 1982, UNQUOTE.

**EXHIBIT 5—AMERICAN EBMASSY, MONROVIA,  
LIBERIA, TELEX TO SECRETARY OF STATE,  
WASHINGTON, D.C. DATED JUNE 10, 1982**

[Stamped:] Received 10 Jun 82 1624z  
UNCLASSIFIED

0 101548Z JUN 82  
FM AMEMBASSY MONROVIA  
TO SECSTATE WASHDC IMMEDIATE 2678  
INFO AMERBASSY LONDON IMMEDIATE  
INFO AMEMBASSY BUENOS AIRES IMMEDIATE  
UNCLAS MONROVIA 05744

E.O. 12065: N/A  
TAGS: EWWT, LI, UK, AR, FA, US  
SUBJ: ATTACK ON LIBERIAN REGISTRY TANKER  
REF: MONROVIA 5694

1. THERE FOLLOWS A PRESS RELEASE ISSUED JUNE 9, 1982 BY THE BUREAU OF MARITIME AFFAIRS, GOVERNMENT OF LIBERIA.

2. QUOTE:

THE BUREAU OF MARITIME AFFAIRS WISHES TO INFORM THE PUBLIC AS FOLLOWS:

THE LIBERIAN TANKER "HERCULES", OFFICIAL NUMBER 3763 WHICH WAS REPORTED ATTACKED AND HIT TWICE BY MILITARY AIRCRAFTS IN THE SOUTHERN ATLANTIC WATERS ABOUT 480 NAUTICAL MILES AWAY FROM THE FALKLAND WAR ZONES, WAS ON A BALLAST VOYAGE FROM RIO DE JANEIRO, BRAZIL TO VALDEZ, ALASKA ON CHARTER.

THE "HERCULES", A 99,827 GROSS TON TANKER WAS BUILT IN 1971, AND IS OPERATED BY MARITIME OVERSEAS CORPORATION OF NEW YORK CITY. THE VESSEL WAS FIRST ATTACKED ON THE MORNING OF JUNE 8 BY A SINGLE FOUR PROPEL-

LOR MILITARY AIRCRAFT WHEN SHE WAS IN THE POSITION 46 DEGREES 30 MINUTES SOUTH, 49 DEGREES 30 MINUTES WEST. A BOMB HIT THE "HERCULES" BUT DID NOT EXPLODE AND FELL INTO THE SEA. THE SECOND ATTACK WAS REPORTED AT 1345 EASTERN DAYLIGHT SAVING TIME THE SAME DAY BY THREE FOUR PROPELLOR MILITARY AIRCRAFTS. THIS TIME THE "HERCULES" WAS HIT BY A ROCKET WHICH DID NOT EXPLODE. THE VESSEL IS CURRENTLY HEADING BACK TO RIO DE JANEIRO IN DAMAGED CONDITION. BY DIRECTIVE OF THE COMMISSIONER, THE MATTER WAS REPORTED TO ADMIRAL SHEAR, MARITIME ADMINISTRATOR OF THE UNITED STATES, THE ESTABLISHED POINT OF CONTACT FOR VESSELS IN DANGER. ADMIRAL SHEAR HAS CONTACTED THE ARGENTINE AND BRITISH GOVERNMENTS TO PREVENT FURTHER ATTACK ON NEUTRAL VESSELS. MEANWHILE, DEPUTY COMMISSIONER GEORGE B. COOPER IS WORKING ALONG WITH AMBASSADOR JOSEPH GUANNU, LIBERIA AMBASSADOR ACCREDITED TO THE UNITED STATES, IN FORMULATING MEASURES TO PREVENT ANY ADDITIONAL ATTACKS ON LIBERIAN VESSELS PLYING INTERNATIONAL WATER. UNQUOTE SWING

10/1320 COPY PASSED TO MARAD []

enclosure (3)

#### EXHIBIT 6-AFFIDAVIT OF DOUGLAS R. BURNETT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**Index No. 85 Civ. 4365 (RLC)**  
**Index No. 85 Civ. 4378 (RLC)**

AMERADA HESS SHIPPING CORPORATION and,  
UNITED CARRIERS, INC.,

*Plaintiffs.*

- against -

ARGENTINE REPUBLIC,

*Defendant.*

#### AFFIDAVIT OF DOUGLAS R. BURNETT

State of New York )  
                        )  
                        ) ss:  
City of New York     )

DOUGLAS R. BURNETT, being duly sworn deposes and says:

1. I am an associate with the firm of HILL RIVKINS CAREY LOESBERG O'BRIEN & MULROY, which represents AMERADA HESS SHIPPING CORPORATION ("Amerada Hess") in this litigation.

2. In the course of investigating the June 8, 1982 attack of the S/T HERCULES, we obtained consistent evidence indicating that the armed forces of the Argentine Republic had carried out the attack. Our Investigation Report, to

gether with supporting documents and Amerada Hess' claim for the value of its lost bunkers is included as Exhibit 1 to the Plaintiffs' Joint Exhibits.

3. On August 3, 1983, this report and its supporting documents, including Amerada Hess' claim for restitution, were hand-delivered to the First Secretary of the Embassy of the Argentine Republic, Dr. Jose Maria Ortegui (Exh. A). The First Secretary assured us that the report would be immediately transmitted to the Argentine Government.

4. On September 29, 1983, November 4, 1983, November 18, 1983, January 23, 1984 and February 8, 1984, we attempted without success to obtain Argentina's position with respect to our claim through the Argentine Embassy (Exh. B).

5. On February 22, 1984, I had a call returned by Dr. Ortegui who informed me that the matter was being handled jointly by the General Counsel of the Ministry of Defense and the Ministry of Foreign Affairs in Argentina. Dr. Ortegui strongly recommended that we retain an Argentine attorney to pursue our client's claim directly with the ministries involved in Argentina (Exh. C).

6. Between February 29, 1984 and March 5, 1984, we were able to retain the distinguished Argentine lawyer, Dr. Jose Domingo Ray (Exh. D). Dr. Ray is an experienced admiralty attorney and a former head of Argentina's delegation to the Comite Internacional, a world organization of maritime lawyers. He has also represented his country at the United Nations.

7. On March 14, 1984, Dr. Ray informed us that he had delivered to the Ministry of Foreign Affairs, a copy of the inquiry of the Brazilian Navy which confirmed the neutral status of the HERCULES (Exh. 3). In mid-April, 1984, Dr. Ray delivered to the Argentine Government, a formal statement of the case under International Law, a final Demand for Restitution, and Notice of our intention to

proceed under the Alien Tort Statute, 28 USC § 1330 *et seq.*, (1789) [sic] (Exh. D). On May 24, 1984, the Ministry of Foreign Affairs replied and stated, in part:

"To this respect, I inform you that, having in mind the nature of the case, the North American law firm of Hill Rivkins Carey Loesberg O'Brien & Mulroy can send all sort of documents, memorandum, etc. to the Argentine Embassy in Washington D.C., which will make the necessary arrangements to make them arrive at this legal staff."

A copy of this note and the cover letter of Dr. Ray dated June 13, 1984 is included as Exhibit E to this Affidavit. As Dr. Ray noted, "after the note received, there is no doubt that the attempt remains in a dead way." (Exh. E).

8. As the second anniversary of the attack due [sic] near, we became concerned over what we had been informed was a two-year Statute of Limitation for this type of action in Argentina. As previously indicated, Dr. Ray had indicated that he would not be able to represent us in public litigation in Argentina on this claim (Exh. D).

9. On May 31, 1984, telexes were sent to four of the leading international law firms in Argentina as listed in *Martindale Hubbard*. [sic]

10. Our attempt to retain the law firm of Abeledo, Gottheil y Asociados and their reply, attached as Exhibit F to this Affidavit stated, in part:

"We have studied carefully chance of success of a legal action of recovery in Argentine Courts in that we have reached the conclusion that under the circumstance of fact and applicable precedence the case has almost no probability of a positive outcome.

As a consequent, we would feel uncomfortable defending a case the viability of which we do not

see. We regret to tell you that we prefer not to engage in such litigation."

This firm, under cover of a letter dated June 8, 1984, sent an opinion of the National Supreme Court of Justice, dated September 27, 1983 whereby the Court held that it had no jurisdiction for acts committed by government agencies during the war (Exh. F).

11. On June 1, 1984, the firm of Estudio Beccar Varela declined to represent us. Their reply, attached as Exhibit G to this Affidavit, stated, in part:

"Without knowing whether the navigation of the HERCULES in the conflict zone was innocent or not, we may decide if we would consider assisting you in this case, because we are inclined to refrain from acting against our Government in a claim for damages reportedly resulting from war action when hostilities have not yet been officially brought to an end.

Even in the case that the navigation is proven innocent we would feel impeded to act because, as you perhaps know, we are acting as special Argentine counsel for banks in the re-financing of the Argentine foreign debt and are simultaneous representation of a claim in action against the Government in a case that will have large political implications may [sic] create a conflict of interest." (Exh. G).

12. On May 31, 1984, we contacted the law firm of C&C Beccar Varela with respect to representation of our client in this matter. I received a telephone call the following day and after discussing the case with the senior partner of the firm, Dr. Cosme Beccar Varela, this firm agreed to represent Amerada Hess (Exh. H). Immediate arrangements were made to have the file transferred from Dr. Ray's office to the offices of C&C Beccar Varela. The file transfer was accomplished on June 5, 1984.

13. On June 5, 1984, we received a telex from Dr. Varela which stated:

"... we wish to inform you that we have received today afternoon the papers from Edy, Roche y de la Vega and after careful reading, we reach the moral conviction that we cannot defend the case. The facts seem to indicate that the vessel was directed to the English fleet. The geographical position is unexplainable except that, the cargo of usable gasoline and not crude, the lack of clear identification of the aircraft that bombed the ship three times and also circumstantial evidence against the contention of the time charterers, from our personal point of view." (Exh. H).

14. I was shocked to receive the above reply. Dr. Varela, after we had discussed the case in detail on the telephone on June 1, 1985, had been enthusiastic and eager to assist us in this matter. In the period between that conversation and the June 5, 1985 telex, the only documents he had received from Dr. Ray were those contained in Exhibits 1 and 3 of the Plaintiff's Joint Exhibits. A careful reading of these documents shows that there is absolutely no indication that the S/T HERCULES was involved in any way in support of the English fleet or carrying a gasoline cargo. We immediately sent a telex to Varela and demanded to know what document in the file implicated the ship as supporting the English fleet. We received no response.

15. On July 23, 1984, we received a bill from the firm of C&C Cosme Varela for \$2,200.00. On December 5, 1984 we replied and said that before we could instruct our client to pay the invoice, we stated it would be necessary for Dr. Varela to disclose to us the evidence he had which showed the HERCULES was supporting the British fleet.

On December 19, 1984, Dr. Varela replied and stated simply that:

"We have reached the moral conviction that the vessel was directed to the English fleet and, therefore, we couldn't defend the case."

Furthermore, the letter stated:

"As that was not a case for an Argentine, in our opinion, we communicated to you our negative answer . . ." (Exh. H).

16. In reviewing the entire relationship with C&C Becker Varela, I can only infer from the radical change in attitude of the Argentine attorneys, totally unsupported by any documents or other evidence, that someone had intervened with our attorneys and directed them to discontinue their representation of Amerada Hess.

17. An additional attempt to retain another Argentine firm in early June, 1984 also met with no success (Exh. I).

18. Since that time, I have monitored local Argentine magazines, such as *Gente* and *Siete Dias* as well as other international publications to determine if the change in the Government of Argentina would change my conclusion that it would be impossible to find a forum or counsel in Argentina to represent Amerada Hess. In this light, The Rattenbach Commission, the official Argentine Government inquiry into the Malvinas War, completely omitted any reference to the attack on the S/T HERCULES. Based on this monitoring, together with knowledge of the unsuccessful attempt by attorneys for the plaintiff, United Carriers Inc., to obtain recognition and compensation for the owner's claim on March 27, 1985, I am of the firm opinion that it is impossible for Amerada Hess to obtain

"a day in Court" in Argentina or even be represented by competent Argentine Counsel in its claim for restitution, universally recognized under International Law.

/s/ DOUG BURNETT  
DOUGLAS R. BURNETT

Sworn to me this 2nd  
day of October, 1985.

/s/ CATHERINE FARRAGHER  
Notary Public

CATHERINE FARRAGHER  
Notary Public State of New York  
No. 41-6237075  
Qualified in Queen, County  
Commission Expires March 30,  
1986

## EXHIBIT 7-AFFIDAVIT OF RAYMOND J. BURKE, JR.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

85 CIV 4365 (RLC)

AMERADA HESS SHIPPING CORPORATION,  
*Plaintiff,*

- against -

ARGENTINE REPUBLIC

*Defendant.*

85 CIV 4378 (RLC)

UNITED CARRIERS, INC.,  
*Plaintiff,*

- against -

ARGENTINE REPUBLIC,

*Defendant.*

AFFIDAVIT OF  
RAYMOND J. BURKE, JR.

State of New York      )  
                              ) ss.:  
County of New York     )

RAYMOND J. BURKE, JR., having been duly sworn,  
deposes and says:

1. I am a member of the firm of Burke & Parsons, attorneys for Plaintiff UNITED CARRIERS, INC. ("United"), and am admitted to practice before this Honorable Court.

2. The facts giving rise to the claim of United are:

(a) S/T HERCULES (the "Vessel") was a steam-turbine crude oil tanker of 220,117 deadweight tons, with a length overall of 1058' and a beam of 158', built by Hitachi Zosen, Sakai, Japan in 1971. She was registered under the laws of the Republic of Liberia and owned by United.

(b) From the opening of the Trans-Alaska Pipeline System ("TAPS") in late 1977 until she was attacked, the Vessel was continuously in the TAPS trade under a time charter to Amerada Hess Shipping Corporation ("Hess Shipping"), an affiliate of Amerada Hess Corporation ("Hess") carrying full cargoes of Hess' share of Alaska North Slope crude oil from Valdez, Alaska to Hess' refinery at St. Croix, U.S.V.I. The Vessel was one of six or seven Very Large Crude Carriers employed by Hess in the TAPS trade. Since there is an exemption to the Jones Act allowing the use of foreign flag vessels between the U.S. Virgin Islands and other U.S. ports, Hess employs foreign flag tankers, all of which are too large to transit the Panama Canal and therefore pass Argentina on all voyages. In fact, on her loaded voyage immediately preceding the ballast voyage during which she was attacked, the Vessel assisted in the search for survivors of the sunken Argentine cruiser GENERAL BELGRANO.

(c) On June 8, 1982, while on a ballast voyage from St. Croix to Valdez, the Vessel was attacked by aircraft at a point approximately 480 miles northeast of the Falkland Islands/Islas Malvinas. After the attacks, the Vessel diverted to Rio de Janeiro [sic], Brazil as a port of refuge.

(d) On June 13, during an inspection of the bomb damage, an undetonated bomb (believed to be a 1,000 pound

bomb) was discovered in No. 2 port wing tank. The Captain of the Port of Rio de Janeiro [sic] was notified and the Vessel was ordered to depart for an unprotected anchorage offshore. Professional salvors (including an American team of explosive ordnance disposal experts) were engaged.

(e) By the time the salvors reached the Vessel, the bomb was under about 40' of water which had entered the tank through the hole in the side shell caused by the bomb's entry. Due to the hazards which would accompany an attempt to remove the bomb (by a "controlled explosion"), it was decided to scuttle the Vessel. Agreement was reached with all interested parties and appropriate Brazilian government officials, and on July 20, 1982, the Vessel was towed from Rio de Janeiro to a point approximately 250 miles from the Brazilian coast and scuttled in 9,000 feet of water.

3. At the time of the attack, limited information was available concerning the nationality of the attacking aircraft and the reason for the attack. According to various publications, such as J. Ethell and A. Price, *Air War South Atlantic* (1983), the Vessel was attacked by an Argentine Force (Fuerza Aerea Argentina) C-130 Hercules transport which had been modified as a bomber. The C-130 was a part of Grupo 1, based in El Palomar but operating out of Comodoro Rivadavia, Argentina. Additional reports surmise that the C-130 was searching for the QE-2 when it located the Vessel by chance.

All known American and British publications correctly report that the Vessel was not a part of the British task force. One such example, R. Villar, *Merchant Ship at War: The Falklands Experience* (1984), stated:

Another incident was when the Liberian-registered tanker *Hercules*, totally unconnected with the Task Force and on peaceful passage some 500 miles north of the Falklands during 8 June, was clearly mistaken by the Argentine Air Force

for a British tanker and bombed and hit. Although these bombs did not go off either, their presence was such a danger that the ship had eventually to be sunk in deep safe water.

4. Attempts were made by Hess Shipping's attorneys to seek restitution from the Argentine Government through both Argentine Counsel and the Argentine Embassy in Washington. Those unsuccessful attempts are described in detail in the affidavit of Douglas R. Burnett, Esq., dated October 2, 1985.

5. United decided to pursue a different avenue by meeting with a senior government official in Buenos Aires. That meeting took place on March 27, 1985 when I met with Dr. Jorge Sabato, Vice-Chancellor, Ministry of Foreign Affairs and Culture. To the best of my knowledge, Dr. Sabato is second in command to the Minister of Foreign Affairs and has responsibility for all matters pertaining to the Falkland Islands/Islas Malvinas.

6. In discussing United's claim, Dr. Sabato advised me that even if it were shown that the Vessel were bombed by Argentine planes (which was denied), he doubted that there existed a "framework" within which to make a settlement payment to us, the only "framework" being by (i) contract, (ii) regulation involving war reparations (which unfortunately do not apply to the Falkland/Malvinas conflict) or (iii) judgment of an Argentine Court. He telephoned his lawyers who confirmed that view.

7. Dr. Sabato suggested that United, in the absence of either a contract or applicable war reparation regulation, file suit in Argentina which (according to Dr. Sabato) has a ten-year statute of limitations; nevertheless, based upon my personal experience and that of Hess Shipping counsel, it was (and remains) my view that suit in Argentina on behalf of United on a claim arising from the Falkland/Malvinas conflict would have been futile. Attached are articles from two newspapers, *Jornal do Brasil* and *Lloyd's*

List, which are representative of many published reports as to the prevailing climate of opinion in Argentina regarding the HERCULES incident. A third excerpt from the New York Times of September 16, 1985 confirms that the Argentine Republic considers the Falkland/Malvinas conflict to be ongoing. Additionally, the inability to obtain competent Argentine counsel, as described in the affidavit of Douglas R. Burnett, Esq., dated October 2, 1985, amounts to an effective foreclosure of both United and Hess Shipping from access to the Argentine courts.

Dated: New York NY  
October 9, 1985

/s/ RAYMOND J. BURKE JR.  
RAYMOND J. BURKE, JR.

Sworn to before me on  
October 9, 1985

/s/ DONNA ORLANDO  
Notary Public

DONNA ORLANDO  
NOTARY PUBLIC, State of New York  
No. 31-4647317

Qualified in New York County  
Commission Expires March 30, 1987

**EXHIBIT 11-AFFIDAVIT OF ANTHONY PETER CLARKE, Q.C. AND NIGEL ROBERT JACOBS**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**Index No. 85 Civ. 4365 (RLC)  
Index No. 85 Civ. 4378 (RLC)**

**AMERADA HESS SHIPPING CORPORATION and,  
UNITED CARRIERS, INC.,**

*Plaintiffs,*

- against -

**ARGENTINE REPUBLIC,**

*Defendant.*

**AFFIDAVIT OF ANTHONY PETER CLARKE, Q.C.  
and NIGEL ROBERT JACOBS**

We, Anthony Peter Clarke and Nigel Robert Jacobs both of 2 Essex Court, Temple, London EC4Y AP, England, make oath and say as follows:

1. Anthony Peter Clarke holds a degree of Master of Arts from Cambridge University (M.A. Cantab.). He is a barrister and was called to the English bar in July 1965. He has been in full time practice in Chambers at 2 Essex Court since being called to the bar. He is a member of Middle Temple. In 1979 he was appointed a Queen's Counsel (that is, a barrister of not less than ten year's call, appointed by the Queen through the Lord Chancellor). He is a Recorder (a judicial appointment which requires the holder to sit for part of the year and try criminal and small civil cases), a member of the panel of Lloyd's Ar-

bitrators, a member of the panel of Wreck Commissioners, and a supporting member of the London Maritime Arbitrators' Association. He specialises in all aspects of admiralty and commercial maritime law.

2. Nigel Robert Jacobs graduated with a Bachelor of Arts degree and a Master's degree from Cambridge University (B.A. Cantab. and LL.M.Cantab.). He is a barrister and was called to the bar in November 1983. He is in practice in Chambers at 2 Essex Court specialising in all aspects of admiralty and commercial maritime law.

3. We are asked to consider the following questions:-

- (i) What law did the English Prize Courts consider that they were applying in 1789—i.e. domestic or international law?
- (ii) Did Prize Law in 1789 provide for the right of the Owner of a neutral merchant vessel to the payment of compensation if his vessel was destroyed by a British warship on the High Seas in breach of international law?

*(i) International or Domestic Law?*

4. Halsbury Vol. 37 (4th Ed., para. 1306) states:-

"Law administered by the Prize Courts. The law administered by the Prize Court is international law which originates in the practice and usage long observed by civilised nations in their relations with each other or in express international agreement."

In the late eighteenth century, the position was identical. The English Prize Courts administered "the law of nations". In *Le Caux v. Eden* (1781) 2 Douglas 594, Buller J. (at 610) stated that:-

"prizes are acquisitions 'jure belli', and the 'jus belli' is to be determined by the law of nations,

and not by the particular municipal law of any country."

5. The rule was repeatedly reaffirmed by Lord Stowell. In *The Maria* (No.1) (1799) 1 C. Rob. 340, he stated that his duty was:-

"not to deliver occasional and shifting opinions to serve present purposes of particular national interest, but to administer with indifference that justice which the law of nations holds out without distinction to independent states, some happening to be neutral and some to be belligerent . . . the law itself has no locality".

In *The Recovery* (1807) 6 C. Rob. 341, 348 he held that:-

"this is a Court of the Law of Nations, thought sitting here under the authority of the King of Great Britain. It belongs to other nations as well as our own; and what foreigners have a right to demand from it, is the administration of 'the law of nations' . . ."

See, also, *The Walsingham Packet* (1799) 2 C. Rob. 77 and *The Elsebe* (1804) 5 C. Rob. 174.

6. The same view was taken by the Courts during the First World War. In *The Odessa* [1915] P.52 at 61, Sir Samuel Evans stated:-

"the law to be administered here is the law of nations, i.e., the law which is generally understood and acknowledged to be the existing law applicable between nations by the general body of enlightened international legal opinion."

This principle was subsequently reasserted by the Privy Council in *The Zamora* [1916] A.C. 77 at 91.

7. Without doubt, therefore, the English Prize Courts considered that they were administering international law or "the law of nations".

*(ii) The Violation of neutrality and the right to compensation*

8. *Halsbury* (supra) at para. 1336 defines the obligations of the captor in the following terms:—

"The primary duty of the captor of an enemy ship . . . is to bring the ship into port for adjudication, so that it may be judicially ascertained if she is enemy property, or neutral property liable to capture, and so prevent mistakes by the captor. Destruction of prize is only allowed when the prize is in such condition as prevents her being sent to any port for adjudication, or when the capturing vessel is unable to spare a prize crew. If the captured ship is neutral or has a licence from the captor's country, she may not be destroyed by the captor; therefore, if a neutral ship or a ship protected by a licence is destroyed, however meritorious such act may be as far as the belligerent state is concerned, the neutral or protected shipowner is entitled to full compensation for the loss of his property."

In our view, this merely represents a refined restatement of the rights and liabilities of the captor imposed by the law in the late eighteenth century. The Report made to King George II in 1753 by the then Judge of the Admiralty Court (Sir George Lee) and the Law Officers of the Crown (including the future Lord Mansfield) is regarded as of seminal importance in relation to the general principles applicable to this issue: *The Ostsee* (1855) 2 Spinks 170 at 171-2; *Story—Notes on the Principles and Practice of Prize Courts* (1854), Edited by Pratt; *The Zamora* (supra). The Report states:—

"The Law of Nations allows, according to the different degrees of misbehaviour or suspicion arising from the fault of the ship taken, and other circumstances of the case, costs to be paid or not to be received by the claimant, in case of acquittal and restitution. On the other hand, if a seizure is made without probable cause, the captor is adjudged to pay costs and damages."

Judge Story (supra) sets out the following principles (at pages 39 and 41):—

"If the capture is made without probable cause, the captors are liable for damages, costs and expenses to the claimants . . .

". . . In respect of the measure of damages, where the vessel and cargo are actually lost, it is usual to allow the actual value of the property."

9. In our opinion, it was well established by the late eighteenth century that a captor was under a duty not to exercise the right of capture (and, 'a fortiori' of destruction) except under reasonable suspicion and on sufficient grounds that the ship or her cargo was subject to condemnation. Where the rights of a neutral owner were infringed—i.e. in normal circumstances, where seizure was improperly made or there was undue delay—the captor became liable for damages, costs and expenses. In other words, every capture was made at the peril of the captor. If a neutral was unjustly deprived of his property, he ought to be put as nearly as possible in the same position as he was before the deprivation took place; in effect, a neutral was entitled to full compensation.

10. This principle is best illustrated by reference to the emergent body of case law in the late eighteenth and early nineteenth century. In *Major Michael Fallieff v. William Elphinstone* (1784) 5 Brown's Parl. Cases 343, the House of Lords held that a neutral owner was entitled to de-

murrage and damages which may have been sustained by reason of the detention. In *The Juffrow Maria Schroeder* (1800) 3 Rob. 152, Lord Stowell stated:—

"It is not necessary that the captor should have assigned any cause at the time of the capture; he takes at his own peril, and on his own responsibility, to answer in costs and damages for any wrongful exercise of the rights of capture."

Similarly, Lord Stowell ordered restitution in *The Zee Star* (1801) 4 C. Rob. 71 (two months' demurrage, costs and damages) and in *The Triton* (1801) 4 C. Rob. 78 (one month's demurrage). See, also, *The Corier Maritimo* (1799) 1 C. Rob. 287 and *The Madonna del Burso* (1802) 4 C. Rob. 370.

11. It followed logically from the well-established principle that a party unjustly deprived of his property must be put as nearly as possible in the same position as he was before the deprivation took place that, when a neutral's loss manifested itself in the actual loss or destruction of his vessel as a result of the captor's act, the neutral was entitled to full indemnification. *The Mentor* (1799) 1 C. Rob. 177 seems to have been the first case where the Prize Court considered (albeit indirectly) the position of the neutral owner whose vessel had been wilfully but wrongfully destroyed. The issue before Lord Stowell was simply who was to be responsible for the payment of compensation to the neutral owner. That the owner had a right to receive compensation from someone appears to have been implicitly accepted by the Court. Thus, in the *Der Mohr* (No. 1) (1800) 3 C. Rob. 129, a case of negligent loss rather than wilful destruction, the Court directed that restitution be made "in value of the ship".

12. *The Acteon* (1815) 2 Dods. 48 appears to be the first case before the English Prize Courts directly concerning the wilful destruction of a neutral vessel and the right to

compensation. Lord Stowell applied the general principles of compensation:—

"On the part of the claimants restitution has been demanded, and there can be no doubt that they are entitled to receive it; . . . it remains to be settled what is to be the measure of restitution—how far it is to be carried. The natural rule is, that if a party be unjustly deprived of his property he ought to be put as nearly as possible in the same state as he was before the deprivation took place; technically speaking, he is entitled to restitution, with costs and damages."

13. This position was subsequently affirmed in *The Felicity* (1819) 2 Dods. 381. Indeed, it was because the reasoning behind *The Acteon* and *The Felicity* was so obvious and followed logically from the earlier decisions on demurrage and damages that Lord Stowell could justifiably state:—

"These are rules so clear in principle and established in practice, that they require neither reasoning nor precedent to illustrate or support them."

Indeed, in *The Ostsee* (supra), the Privy Council approved the above authorities. In our opinion, notwithstanding that the first "wilful destruction" case was not until 1815, the position in 1789 was that any violation or infringement of the rights of a neutral owner would render the captor liable to the extent of the neutral's loss and deprivation. Accordingly, if that deprivation had taken the form of the loss of the neutral's vessel, the "captor's" liability would have extended to the restitution of the vessel's value.

14. In fact, even before *The Acteon*, this would appear to be the position reached by the U.S. Supreme Court. In *Del Col v. Arnold* (1796) 3 Dall 333, a neutral owner, whose vessel had been scuttled and plundered, was entitled

to "the full value of the property injured, or destroyed". See, also, *Story* (*supra*) page 41 and the footnotes thereto.

15. It follows that in our opinion the answer to question (ii) posed above is Yes.

Sworn at 15 Devereux Court ) /s/ Anthony Clarke  
 WC2R 3JX )  
 in the County of London ) /s/ Nigel Jacobs  
 the 27th day of September 1985)

before me,

/s/ [illegible]

A Solicitor

**EXHIBIT 12-AFFIDAVIT OF DR. VED P. NANDA**

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

85 Civ. 4365 (RLC)

AMERADA HESS SHIPPING CORPORATION,  
*Plaintiff*,  
 v.

ARGENTINE REPUBLIC,  
*Defendant*.

**AFFIDAVIT**

I, *Ved P. Nanda*, having been duly sworn on October 9, 1985, hereby state as follows:

**I. Alien Tort Act Provides Subject-matter Jurisdiction in the Controversy at Hand**

The plaintiff claims that under the Alien Tort Act, codified at 28 U.S. §1330, the district court has subject-matter jurisdiction in the controversy regarding losses allegedly suffered by the plaintiff as a result of bombing attacks by the Argentine armed forces on the M/V Hercules during the conflict between Argentina and the United Kingdom in the South Atlantic in 1982. In response to the inquiry whether such jurisdiction is proper following enactment by Congress of the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§ 1330, 1602 *et. seq.*, my answer is in the affirmative; the Alien Tort Act does provide the requisite jurisdictional basis.

The claim in this case arises under the laws of the United States within the meaning of Article III, U.S. Con-

stitution. Article III provides in part: "The judicial Power shall extend to all cases in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties. . . ."

A primary objective of codifying the U.S. sovereign immunity law into the FSIA was to relieve the Department of State from its customary role of determining claims of immunity. (*See, e.g., Verlinden B. V. v. Central Bank of Nigeria*, 461 U.S. 480, 487-88 (1982).) The question is, do pre-FSIA exceptions survive the passage of the Act? My answer is that, at least, the exception claimed by the plaintiff does.

The FSIA appropriately provides several grounds for the maintenance of suits against a foreign state, its political subdivision, and its agencies and instrumentalities in U.S. courts by enumerating specific exceptions to sovereign immunity. However, FSIA is not to be read as the sole jurisdictional basis for suits against foreign states, especially in a case as the present one, where the neutral shipowner has suffered damages over the high seas allegedly by the acts of the sovereign; this action falls squarely within the ambit of the Alien Tort Act.

The Alien Tort Act, with its genesis in the Judiciary Act of 1789 (Judiciary Act §9, 1 Stat. 73, 77 (1789)), which granted the district courts of the United States original jurisdiction, reads: "The district court shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the laws of nations or a treaty of the United States."

The legislative history of the FSIA does not mention the Alien Tort Act by name. However, more recently, the potential of the latter Act in providing recourse to aliens has been recognized. (*See, e.g., Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. (1980)).

As is evident from the history of the Tort Claim Act (*see Note, The Law of Nations in the District Courts: Fed-*

*eral Jurisdiction Over Tort Claims by Aliens Under 28 U.S.C. §1330, 1 B.C. INT'L & COMP. L. REV. 77 (1977))*, the intended purpose of the Act was to provide an individual alleging a tort with a recourse via original jurisdiction in U.S. district courts. After the promulgation of the FSIA and in view of the silence of the FSIA regarding its reach vis-a-vis the Alien Tort Act, it is submitted that the exception the plaintiff claims in the present action survived the passage of FSIA. This is notwithstanding the language in 28 U.S.C. § 1605(a) and the dicta suggesting that the FSIA provisions regarding jurisdiction over a foreign sovereign are exhaustive. (*See, e.g., Verlinden*, 461 U.S. 480 (1982).)

An interpretation of the pertinent provisions of these two Acts, undertaken in light of the purposes of the two Acts, especially in view of the silence of FSIA regarding the Alien Tort Act, leads me to the conclusion that Congress must not have intended to foreclose access to the federal judicial arena to an alien plaintiff whose rights of neutrality have been allegedly violated on the high seas. For among the very few established norms of international law during the 18th century, one unequivocally accepted norm was the right of a neutral shipowner to be free from attack on the high seas.

In order for the jurisdiction to rest under the Alien Tort Act, three elements must be present: (1) the claim must be made by aliens; (2) it must be for a tort; and (3) the tort must be in violation of the law of nations or a treaty of the United States. (*See Hanoch Tel-Oren v. Libyan Arab Republic*, 517 F. Supp. 542, 548 (D.D.C. 1981).) Also, the Alien Tort Act is to be invoked only in extraordinary circumstances. (*See IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1015 (2d Cir. 1975); *De Wit v. KLM Royal Dutch Airlines N.V.*, 570 F. Supp. 613, 618 (S.D.N.Y. 1983).) This action meets these requirements.

## II. The Plaintiff's Action Arises Under the Laws of the United States

The incorporation of the law of nations into federal common law is well established. (*See The Paquete Habana*, 175 U.S. 677 (1900).) The unprovoked attacks allegedly by the Argentine armed forces on S/T Hercules constitute a violation of the law of nations. The English Prize Courts have also historically administered the "law of the nations." (*See, e.g., The Maria* (No. 1) (1799) 1 C. Rob. 340, in which Lord Stowell identified his duty on the bench "to administer . . . that justice which the law of nations holds out without distinction to independent states. . . .")

No legislative history of the Alien Tort Act survives on the congressional intent in enacting this statute regarding the effect of the Act on sovereign immunity. Pertinent in this context is the language from *Siderman* in the central district court of California, which recently said: "Although it could be argued that 28 U.S.C. §1330 provides an exception to foreign sovereign immunity, said statute in its grant of subject matter jurisdiction is silent as to its intended effect on foreign sovereign immunity. Whether this silence should be interpreted as impliedly effecting an exception to foreign sovereign immunity requires an examination of the state of the immunity law at the time of enactment." (*See Siderman v. The Republic of Argentina*, C.D. Cal., No. CV 82-1772-RMT (MCx), March 7, 1985.)

Regarding the state of the immunity law at the time of enactment of the Alien Tort Act, this much is certain that in prize cases during the 17th and 18th centuries the captor's sovereign had no defense of sovereign immunity. I would suggest that by analogy, no one else could either, for the prize courts applied international law and under the law of nations the neutral shipowner who suffered loss or damage by the act of a sovereign on the high seas had a right of compensation. (*See, e.g., The Felicity* (1819) 2 Dods. 381.)

## III. The Law of the Sea Convention and Customary International Law

It is also worth noting that provisions in article 110 para. 2 and article 111 para. 8 of the 1982 Law of the Sea Convention (*See The Official Text, U.N. Pub. Sales No. E. 83. V. 5 (1983)*), which are almost identical to the provisions of article 22 para. 3 and article 23 para. 7 respectively of the 1958 Geneva Convention on the High Seas (*See U.N. Doc. A/CONF. 13/L.53*)), specify the ship-owner's right to compensation "for any loss or damage that may have been sustained" by certain acts of a warship or the ship of a coastal state pursuant to the right of visit and the right of hot pursuit respectively. The former applies in cases such as piracy and slave trade and the latter when the foreign ship has allegedly violated a coastal state's laws and regulations.

The articles in these conventions mentioned above simply codify what has become a principle of customary international law, that a neutral shipowner who has suffered loss or damage by the act of a sovereign on the high seas has a right to compensation and restitution. These conventions do not specify the forum in which a shipowner's claims for compensation are to be adjudicated. It could be added that since the prize courts, established by a sovereign, provided the proper forum during the era of the prize cases, by analogy, Argentina would be an appropriate forum for adjudication of this action. However, if the Argentine forum were not available to the plaintiff, the alleged action being a violation of customary international law, coupled with the Alien Tort Act's provisions specifying jurisdiction in a U.S. district court, this action's adjudication in a U.S. district court is proper. The applicable law will be the law of nations.

/s/ VED P. NANDA  
VED P. NANDA

Signed and entered on October 9, 1985.

SUBSCRIBED AND SWORN TO before me,  
the undersigned  
Notary Public, on this 9th  
day of October, 1985.

/s/ LORA L. COVEN  
Notary Public  
7039 E. 18th Avenue, Suite 212  
Denver, Co 80220

My Commission Expires:  
May 10, 1987

**EXHIBIT 23—COMMISSION AS JUDGE OF THE  
ADMIRALTY IN MARYLAND,  
DATED NOVEMBER 27, 1775**

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**NAVAL DOCUMENTS OF  
THE AMERICAN REVOLUTION**

**VOLUME 2**

American Theatre: Sept. 3, 1775 - Oct. 31, 1775  
European Theatre: Aug. 11, 1775 - Oct. 31, 1775  
American Theatre: Nov. 1, 1775 - Dec. 7, 1775

William Bell Clark, Editor  
*For and in Collaboration with*  
*The U.S. Navy Department*

With a Foreword by  
President Lyndon B. Johnson  
And an Introduction by  
Rear Admiral Ernest McNeill Eller, U.S.N. (Ret.)  
Director of Naval History

WASHINGTON: 1966

COMMISSION AS JUDGE OF THE ADMIRALTY IN  
MARYLAND<sup>1</sup>

Maryland ss Robert Eden Esquire Lieutenant General and  
Chief Govenor in and over the Province of  
Maryland and Admiral thereof

To Robert Smith Esqr of the City of Annapolis

Greeting Out of the especial Trust and Confidence I have in your Fidelity Integrity Circumspection and Knowledge I do hereby Authorize and impower you to Take Cognizance of and Proceed To hear and determine all causes Civil and [November 1775 1165] Maritine and All Plaints Contracts Offences or Crimes so Accounted Pleas Debts Exchanges, Assurances, Accounts, Charter Parties, Agreements and Writings concerning the lading of Ships and Vessels and in all other Business and contracts which Concern Mariners for their Ships Convoys and Freight or Mariners Wages or in any wise thereto relating also Suits Trespasses Injuries Extortions and demands and all civil and Maritine Matters whatsoever between Merchants or between Masters and Owners of Ships or other Vessels and Merchants or other Persons whatsoever with the said Masters or Owners of Ships and of all other Vessels whatsoever Occupied or used or betwen any other Persons whatsoever had made commenced or contracted for any Thing Matter or cause or Business whatsoever as well in or upon or Through the Sea the Publick Stream[s] Ports fresh Waters Rivers Creeks or Places overflowed with Water whatsoever within the Flux and reflux of the sea and Water To high water Mark as upon the Shores or Banks whatsoever to them or any of them adjacent expedited or to be expedited together with all and Singuler their Incidents Emergencies and causes whatsoever anne[xed] And connexed or in what Manner soever the

causes Plaints and Other the Premises aforesaid or any of them may happen by Order To be transacted drawn or made according to the civil and Maritine Law of the high Court of Admiralty of great Britain within This Province and the Territories to the same belonging and also in any of The City's Towns or Places in the aforesaid Province for the like Causes And Matters to sit hear and Determine therein according to Justice and Judicially and Lawfully to proceed together with all and singular their Incidents Emergencies Dependances and Causes a[nne]xed or con-nexed whatsoever And furthermore to compell Witnesses (if for good Will) hatred favoured fear or for any other Causes whatsoever they shall withdraw themselves To give their Testimony to the Truth in all or any of the like Causes according As right requireth and furthermore to take all recognizances Obligations Surties and Stipulations as well on the Part or instance of any Person Whatsoever for any contracts Debts or other Matters causes or Busi-ness Whatsoever and them put in Execution and cause or command them to be executed and also Duly to enquire of and take into your Custody all and singular the Goods of Traytors Pyrates Manslayers Felons Fugitives and Fel-o's dese and of all Bodies and Persons drowned slain or any wise coming to their Death in the Sea Ports Rivers Publick Streams or Creeks And Places whatsoever over-flown and of Maihm happening in Any of the Places afore-said and of all unlawful and forbiddin Engines and Netts and of the Occupiers and users thereof and of all Royal Fish [V]jitz Whales Sharks Grampusse Dolphins Sturgeons and all other great large Fish whatsoever to the right Honorable The Lord Proprietary of this Province belonging in right of his Admiralty thereof and also of and upon all goods lost on the Sea Wrecks Flotsons Jetsons Lagons Shoars cast upon the Sea and Wrecks of the Sea and Goods had or accounted to be forfeited or by any Chance or Fortune Found or to be found and of all Trespasses Faults Offences Enormities and Crimes Maritine whatso-

<sup>1</sup> Court of Vice-Admiralty Records, Md. Arch.

ever as well upon the High Sea as in or upon all And any the Ports Rivers Fresh Waters and Creeks or Sea Shores and to the height of the Water from any the first Bridge towards the sea in and Through this Province howsoever belonging [1166 American Theatre] to the Maritime Coasts thereof Whensover and howsoever coming and happening committed and done or to be Perpetrated and committed discovered and found and to Tax moderate exact Collect and Levy all Fine Mulcts Amerciaments and compositions whatsoever in the Part Due or to be Due and them lawfully to Command and Expect to be collected and Paid and also to Proceed in all and Singular the Matters aforesaid and in all other Causes Contempts and Offences whatsoever and howsoever contracted or if so be the goods or Persons of the Offenders shall be found within the Jurisdiction of the Court of Admiralty within this Province according to the Laws Civil and Maritime and Customs of old used in his Majesty's high [cojurt of Admiralty of great Britain and by such other Lawfull Ways Manners and Means as you may better know and can Proceed And such Causes and Contracts to hear examine Discuss and finaly Determine saving nevertheless the right of Appealing and also to arrest command and cause to be arrested the Ships Persons Effects goods Wares and Merchandizes whatsoever for the Premisses and for any of them or other causes whatsoever concerning them in what Places soever Within the Province of Maryland aforesaid the Territories thereof they shall happen to be or be found in or without the Liberties and to Compel All Persons whatsoever in that Part as the Case shall require to Appear and answer with the Power of inflicting any Punishment or Mulct according to the Laws and Customs aforesaid and to do And Cause Justice to be done therein and also Summarily and Plainly to Proceed the order of right being Preserved or the Sail [illegible] up without Noise and the Figure of Judgement alone being made and the Truith of the thing inspected AND I DO further commit And by the Tenor of these

Presents grant you full Power and Authority to fine correct punish and Chastize and reform all guilty Persons Imprisoned and all Violaters and Usurpers of the rights of the Court of Admiralty within this Province and all Delinquents And Contumaciously absenting Sailors Mariners Fishermen Boatmen and other Workmen having skill or exercising Maritime Affairs Ordinances and customs aforesaid and their De[sser]ts as also according to the Statutes and ordinances of the kingdom of great Britain In that Part Published and Provided and them to imprison And cause to be imprisoned in any of the Prisons within the Province of Maryland or the Maritime Places thereto belonging and such Persons so imprisoned who ought to be Delivered therefrom To command and cause to be Delivered and altogether to be Acquitted and Discharged and do hereby grant unto you Power and Authority of Promulgating or interposing all Decrees and Sentences whatsoever and them to command to be executed together with the cognizance and Jurisdiction of all other Causes civil And Maritime commenced or to be commenced or which any Ways concern or relate to the Sea Affairs or the Transporting or Passage over the Sea or any Naval Journey or Maritime Voyage or Maritime Jurisdiction Aforesaid also with Power of Proceding therein according to the civil and Maritime Laws and Customs Aforesaid of the high Court of Admiralty of great Britain of old used as well of more Office mixt or Promoted as at the Instance of any Party as the Case shall require and it shall seem expedient And to grant you full authority to execute all and singular the Premisses in the Places aforesaid expressed and I do hereby Appoint you the [November 1775 1167] Said Robert Smith my Commissary in the said Province and Territories aforesaid during Pleasure hereby Granting upon you the said Robert Smith all Fees Profits and Advantages to the said Office any ways belonging and I do hereby command all Justices of the Peace Mayors Sheriffs Keepers of Goals and other Officers and Ministers

within this Province to be aiding and Assisting to you as  
Becometh as they will answer the contrary at their Peril—

Given at the City of Annapolis this twenty seventh Day  
of Novemb'r in the fifth Year of the Dominion of The  
right Honorable Henry Harford Esquire Anno Domine 1775

Signed by order James Brooks

**EXHIBIT 40—LETTER FROM CONGRESSMAN YOUNG  
TO PRESIDENT REAGAN DATED JUNE 16, 1982**

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Congress of the United States  
House of Representatives  
Washington, D.C. 20515

June 16, 1982

President Ronald Reagan  
The White House  
Washington, D.C.

Dear Mr. President:

Enclosed for your use and information is a press report on the attack and bombing of 220,000 ton crude oil tanker engaged in the trade of moving Alaska crude oil from Valdez, Alaska around South America's Cape Horn to a refinery in St. Croix, Virgin Islands. While the news reports are very sketchy, this attack on a tanker moving Alaska crude oil to a U.S. Territory for refining and eventual use on the East Coast of the United States raises very serious questions about security of supply and U.S. policies governing the movement of Alaska crude oil.

This attack, coupled with recent events in Central America and in the Middle East, underscores once again the vulnerability of this nation to serious disruption in domestic and imported crude oil supplies and shipments. Our extreme vulnerability to instability in the Middle East has been widely acknowledged since 1973. Subsequent events, for example, in Israel, Lebanon, Syria, Iran, Bahrain, and between Iran and Iraq, indicates the continued uncertainty of the free world's oil security.

As you know, we are also dependent on the Panama Canal for the transshipment to Gulf Coast refineries of some 750,000 barrels of crude oil produced in Alaska and California. At present there is no secure west-to-east pipe-

line transportation system to transport this oil, should the Canal (or the pipeline across the Isthmus of Panama scheduled to be completed later this year) be disabled. This adds additional uncertainty to our nation's oil supply outlook.

Secretary of State Haig a few weeks ago said that in Central America, "We are, in effect, at the very core of United States hemispheric interests," involving "the strategic vulnerability of the Canal and our fundamental dependence on its being retained in friendly hands." Assistant Secretary of State Enders stated recently that the "decisive battle for Central America is under way in El Salvador. If after Nicaragua, El Salvador is captured by a violent minority, who in Central America would not live in fear?" he asked. Assistant Secretary Enders went on to ask, "*How long would it be before major strategic United States interests—the Panama Canal, sea lanes, oil supplies—were at risk?*" (Emphasis added.) To suggest that the Panama Canal can be an inviting target for terrorists is to state the obvious. To learn now that a ship engaged in hauling Alaska oil has been attacked en route via Cape Horn emphasizes the risks we face.

I am deeply concerned that a combination of the continued upheaval in oil producing areas and the vulnerability of the ocean transportation systems as the attack on the tanker Hercules demonstrates, continued to pose a severe threat to our national security. I am accordingly asking you, the Department of Defense and other appropriate agencies for an assessment of this potentially dangerous situation.

Construction on the Northern Tier Pipeline, a major west-to-east crude oil pipeline authorized by Congress under Title V of the Public Utilities Regulatory Policies Act of 1978 (PURPA), would eliminate any potential crude oil supply disruption caused by armed aggression in South America or a blockage of the Panama Canal. When the previous Administration approved the Northern Tier Pipe-

line pursuant to procedures outlined in PURPA, it identified national security interests as a major factor in its decision. Located entirely within the United States, the pipeline would provide a totally secure transportation mechanism to move vital oil supplies to the nation's agricultural and industrial heartland. However, construction of this oil transportation system is currently blocked by the failure of a single state—Washington—to grant the final necessary permit. At present this matter is in litigation.

I would appreciate it if you would have the Secretaries of Defense and State prepare a report on the following matters:

1. The attack on the tanker Hercules;
2. The threat posed to other tankers in the Alaska crude oil trade and other shipping using Cape Horn; and
3. Current U.S. policy toward construction of an all American secure west-to-east crude oil pipeline for moving Alaska crude to market.

I would appreciate progress reports on this matter.

Sincerely,

/s/ DON YOUNG  
DON YOUNG  
Congressman for All Alaska

**EXHIBIT 33—HAND-WRITTEN NOTES OF SENATE  
DRAFT OF THE JUDICIARY ACT OF 1789**

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(For convenience of the Court and of Counsel this exhibit  
is bound in on the opposite pages.)

13

And be it further enacted, that the district  
courts shall have exclusively of the courts of the  
~~several states~~, cognizance of all crimes & offenses  
which shall be committed under the authority of  
the United States, or by the law of the  
United States, or by the laws of the  
districts, committed within the same.

And be it further enacted, that the several  
districts where the laws of the  
United States, notwithstanding, not exceeding 10%  
a higher fine than 100 dollars, extending  
to a term of imprisonment than 6 months, is not  
to be inflicted, except where the laws of the  
United States, shall otherwise direct, & the trial  
of fact shall be by jury. — And there also  
there shall be original cognizance of all  
civil causes of admiralty & maritime jurisdiction  
against vessels ~~wherever they may be found~~  
including all seizures under laws of import, navigation  
or trade of the United States, while the seizers,  
which shall be made on waters navigable from the  
place where they were made, within their  
respective districts, by virtue of such laws.  
Giving to the district in all cases the right of a  
common law remedy before the common law  
is competent to give it, — and shall also have  
cognizance, concurrent with the courts of the  
several states or the circuit courts, of those cases  
that may be, of all causes, where a foreigner has

for a tort only in a violation of the law of  
nation or a treaty of the United States. — And  
while also have cognizance concurrent as last  
mentioned, of all civil suits of common law where

the United States, or a common informer as well  
as himself by the United States, & the matter  
is dispute amount, exclusive of costs, to the  
sum or value of one hundred and sixteen  
dollars. And the true  
of facts in both cases legislation shall be  
by Congress.

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15  
offences cognizable therein. But no person brought before the court shall be entitled to stand in any civil cause before any other circuit court or district court.

16. Within the district where the cause is tried, the circuit court may

also have appellate jurisdiction from the district court under the regulations & notice being given after trial.

1.2 And be it further enacted by the Legislature, that if a suit be commenced in any state court against a foreigner or citizen of another state than that in which the suit is brought, & the matter in dispute exceeds the amount sum or value of one thousand exclusive of costs, & such foreigner or alien shall at the time of entering his appearance in such state court file a motion for the removal of the cause for trial into the next circuit court to be held in the district where the suit is pending, and offer good & sufficient surely for his entering in such circuit court, on the first day of its session, copies of said process against him, &

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also for his there appearing in the cause if special bail was originally requisite thereto, it shall then be the duty of the state court to

accept the Surety & Sinner in the proceeding  
in the cause; & any bail shall may have been  
originally taken shall be discharged; & the  
said copies being entered as affreid in the  
circuit court, the cause shall then proceed in  
the same manner as if it had been brought

here by original process.— And if in any  
action commenced in a State Court the title of  
land be concerned, & the parties are citizens of  
the same State, & the matter in dispute exceed  
the sum or value of <sup>one thousand dollars,</sup> exclusive  
of costs, the sum being made to appear to  
the Satisfaction of the court, & the defendant  
in his plea in bar shall have set up a title under  
a grant from another state than that in which  
the suit is pending, & more that the plaintiff  
also set forth his title, the plaintiff shall set  
it forth in his replication, & if he found it  
upon a trial from another state than that  
which it stands under will stand the  
plaintiff's claim.

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\* and any ~~lien upon~~<sup>attachment of</sup> the goods or estate  
of the defendant by the original process  
shall still hold to respond the final  
judgment.

in the same regulations as in the State  
before mentioned of the removal of a cause  
into that court by a foreigner. And the  
defendant

Defendant shall in such case abide by his place  
of trial;— And the trial of facts in the circuit court  
shall be all with ~~except~~<sup>in</sup> view of equity & of ad-  
ministrative convenience, ~~and~~ <sup>and</sup> shall be by jury.

13

And be it further enacted, That nothing

contained in the Supreme Court shall have

exclusive jurisdiction of sole controversies of a  
civil nature, where any of the United States, one  
party or a foreign state is a party, except between  
a State & its citizens; & except also between a State  
& citizens of other States ~~or~~ <sup>or</sup> foreigner, in which latter  
case it shall have original but not exclusive

jurisdiction. — And there shall have exclusively all  
such jurisdiction of suits or proceedings against  
ambassadors, other publick ministers or consuls,  
or their domesticks or domestick servants, as a  
court of law can have or exercise consistently  
with the law of nations; And original, but not  
exclusive jurisdiction of ~~a~~ suit for treasuries  
brought by ambassadors or other publick ministers  
or consuls, or their domesticks or domestick ser-

vants. — And the trial of facts in the Supreme  
Court, in sole actions at law against citizens  
of the United States, shall be by jury.— The  
Supreme Court shall have appellate jurisdiction

from

BEST AVAILABLE COPY

from the circuit court & county of the several  
states in the cases herein after specially pro-  
vided for.— And shall have power to issue  
writs of attachment & distress, with when  
instructions and writs of replevin,

and warrants by the principles & usages of law,  
to any courts of record, or persons holding office  
under the authority of the United States.

And be it further enacted ~~that~~ <sup>and</sup> be it enacted,

opernad, that all the before mentioned Courts of  
the United States shall have power to issue writs  
of Scire facias, Subpoena & processes with  
Subpoena ad testium & all other writs not specially  
provided for by statute, which may be necessary  
for the exercise of their respective jurisdictions  
& agreeable to the principles & usages of law.

— And that either of the Justices of the Supreme  
Court, as well as judges of the district court,  
shall have power to grant writs of habeas corpus  
for the purpose of an enquiry into the  
causes of commitment. Provided that writs of  
habeas corpus shall be no case excepted to prison-  
ers in gaol unless where they are in custody  
under or by colour of the authority of the

units, &c., or are committed for trial before some court of the same, or are necessary to be brought into court to testify.

15

23rd instant presented by the

Court of Common Pleas &amp; Equity of the State of New Hampshire at Exeter, in motion that witness

thereof being given to require the plaintiff to produce books or papers in their possession or power, which contain evidence pertinent thereto,

in cases & under circumstances where they will be compelled to produce the same by the ordinary rules of proceeding in chancery or on motion of a plaintiff to require the defendant to disclose on ~~his~~<sup>an</sup> oath his knowledge in the cause, in cases & under circumstances where a defendant might be compelled to make such disclosure on oath by the aforesaid rules of proceeding in chancery; and if a plaintiff shall fail to comply with such order to produce books or papers, it shall be lawful for the court respectively, on motion, to give the like injunction for the defendant as in cases of nonsuit; & if a defendant shall fail to comply with such

order, either to produce books or papers or to give an oath, that it shall be lawful for the

the court respectively, on motion or affidavit to give judgment against him, by default.

And be it further enacted by the authority aforesaid that suits in equity shall not be sustained in either of the courts of the United States, in any case where remedy may be had at law. ~~or in admiralty jurisdiction~~  
or in maritime jurisdiction. And be it further enacted by the authority aforesaid, that all the said courts of the United States shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which they shall have usually been granted in the courts of law. - And shall have power to impose & administer all necessary oaths, & to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any course or hearing before them same day.

And be it further enacted by the authority aforesaid, that no suit, proceeding, such suits are not subject to the laws of the United States, and be it further enacted by the authority aforesaid,

and be it further enacted by the authority aforesaid,

and be it further enacted by the authority aforesaid,

of fact made by him. — And shall also have exclusive cognizance of all causes of admiralty & maritime jurisdiction, except such causes between persons including all seizures under laws of impost, navigation, or trade of the United States, which the seizures shall be made on water, navigable from the "Sea with respect of [to] ports within their jurisdiction, by virtue of any right resulting to the United States, the right of a common law remedy where the common law is competent to give it; — And shall also have cognizance, concurrent with the courts of the several states or the circuit courts, of those cases which may be of sole cognizance where a foreigner is.

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for a port only, in proportion of two-thirds of the nation's or a third of the United States. — And shall also have cognizance, concurrent, last mentioned, of all cases within the common law which the United States, or a common informer as well for himself as the United States sue, of the matter.